

The commentaries and analyses contained in this document are not legal opinions.

Use with caution, and seek professional advice if necessary.

## Study Guide for USAID Standard Provisions for US NGOs

Brief analyses of and commentary on the provisions.

### Mandatory Standard Provisions

#### M1. Applicability of 2 CFR 200 and 2 CFR 700 (December 2014)

This provision stipulates that the agreement is subject to all requirements of [2 CFR 200](#) and [2 CFR 700](#) (administrative requirements, cost principles and audit requirements);

If the recipient is a pass-through entity (makes subawards under the award), then the recipient must also:

- apply all SPs attached to the agreement to subawards to US NGOs;
- apply all applicable USAID [SPs for non-US NGOs](#) to subawards to non-US NGOs; and
- monitor subrecipient compliance in accord with the monitoring procedures in 2 CFR 200/700 ([2 CFR 200.330-332](#) and [2 CFR 700.12-13](#)).

See also: [About 2 CFR 200](#), [Notes on 2 CFR 700](#), [Study Guide for non-US SPs \(USAID\)](#), [Study Guide for Fixed Amount Award SPs \(USAID\)](#), [Subawards](#)

#### M2. Ineligible Countries (May 1986)

This stipulates that award funds may only be expended for assistance to eligible countries. But it doesn't name any ineligible countries. It might be reasonable to rely on USAID's geographic code 937 as a guide to eligible countries; see [USAID Eligibility Rules](#) for more information.

#### M3. Nondiscrimination (June 2012)

When hiring US citizens or legal residents, the recipient must not discriminate on the basis of race, color, national origin, age, disability, or sex when work is performed in the U.S. or when employees are recruited from the U.S.

This provision also "strongly encourages" everyone to "develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection for all their employees on these expanded bases, subject to applicable law."

#### M4. Amendment of Award (June 2012)

The award can only be amended in writing, signed by the AO and (when necessary) the Recipient.

#### M5. Notices (June 2012)

This provision tells what constitutes legally binding correspondence regarding the terms and conditions of the agreement. It allows email correspondence.

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#### **M6. Subawards and Contracts (December 2014)**

Subrecipients and contractors engaged by the recipient have no relationship with USAID and no right to submit claims directly to USAID. USAID assumes no liability for any third party claims against the recipient.

See also [Subawards](#).

#### **M7. OMB Approval under the Paperwork Reduction Act (December 2014)**

This is just a standard notice required by the referenced act. I've always thought this provision to be pretty meaningless, but there it is.

#### **M8. USAID Eligibility Rules for Goods and Services (June 2012)**

This provision does the following:

- Identifies ineligible commodities and services (military stuff, surveillance gear, goods or services supporting law enforcement activities, abortion goods or services, luxury goods, gambling equipment, weather modification gear).
- Prohibits using debarred or suspended suppliers.
- Lists restricted commodities (agricultural, motor vehicles, pharmaceuticals, pesticides, used equipment, USG-owned excess property, fertilizer).
- Invokes [22 CFR 228](#) and specifies default geographic codes. See also [About 22 CFR 228](#).
- Advises the recipient to raise any questions to the AO, if in doubt.

For more commentary on this provision, see [USAID Eligibility Rules](#).

Note that OFAC restrictions, though not referenced in this provision, govern all procurements by US persons. See more on this at [About OFAC Sanctions Programs](#).

This provision must be included in all subawards.

The restrictions imposed by this provision DO NOT apply to expenditures of cost share or program income funds.

#### **M9. Debarment, Suspension, and Other Responsibility Matters (June 2012)**

This provision implements and invokes [2 CFR 180](#) and [2 CFR 780](#), OMB's and USAID's regulations on debarment etc. It requires the following:

- The recipient must notify the AO if they become debarred or suspended.
- The recipient must not knowingly subaward to or contract with entities that are identified as excluded parties in SAM (System for Award Management, [www.sam.gov](http://www.sam.gov)).

It also provides an abbreviated version of itself, which must be included in all subawards and contracts.

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#### **M10. Drug-Free Workplace (June 2012)**

This provision invokes [2 CFR 182](#) and [2 CFR 782](#), OMB's and USAID's regulations on drug-free workplace. Please refer to your Human Resources department for specific guidance on compliance with this requirement.

#### **M11. Equal Participation by Faith-Based Organizations (June 2012)**

This provision implements [22 CFR 205](#), which gains its authority from [22 USC 2381\(a\)](#). It encourages faith-based orgs to compete for awards; lists 5 specific restrictions on the activities of faith-based orgs when implementing programs with USAID funds; prohibits discrimination based on religion; extends Civil Rights Act; and provides for waivers by the AO.

It goes into pretty extensive detail regarding the privileges and prerogatives of faith-based organizations, so if you represent or are partnered with a FBO, you'll want to read it carefully.

#### **M12. Preventing Terrorist Financing -- Implementation of E.O. 13224 (August 2013)**

This prohibits the recipient from engaging in transactions with, or providing resources or support to, individuals and organizations associated with terrorism.

It requires the recipient to check the [OFAC Specially Designated Nationals and Blocked Persons List](#) and the [UN Al Qaeda list](#). (Note that [www.sam.gov](#) may incorporate the OFAC SDN list, but it may be most prudent to rely on both the SAM and SDN listings.)

This provision must be included in subawards and contracts.

#### **M13. Marking and Public Communications under USAID-Funded Assistance (December 2014)**

This provision requires marking of program deliverables in accordance with the approved marking plan.

It defines "public communications" and provides that the AO may require a preproduction review of program materials and public communications.

It encourages public notice of receipt of the award and provides correct language for such notice.

It provides disclaimer language for use with any public communication that hasn't been approved by USAID.

It requires the recipient to provide the AOR with 2 copies of all program materials.

It repeats the 7 "presumptive exceptions" found in [2 CFR 700.16\(h\)](#).

It repeats the waiver option found in [2 CFR 700.16\(j\)](#).

It invokes USAID's authority to require the use of a logo or seal and tagline representing a presidential initiative or other high level interagency initiative.

It provides a short version of itself that must be included in all subawards.

See [About Branding and Marking](#).

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#### **M14. Regulations Governing Employees (August 1992)**

This provides seven rules of conduct for expat employees (whether US or TCN) working for the recipient in the cooperating country. Chiefly, these boil down to the following:

- requires expats to maintain private status;
- limits the sale of expats' personal property or automobiles;
- prohibits expats from engaging in any business, profession, or occupation in country;
- requires expats to show respect for local conventions, customs, and institutions, abide by laws and not interfere in its internal political affairs; and
- stipulates USAID's authority to expel transgressors from the cooperating country.

#### **M15. Conversion of United States Dollars to Local Currency (November 1985)**

This archaic provision requires the recipient to check with the local mission "upon arrival, and from time to time as appropriate" on procedures for converting USD to local currency. It appears to date from a time when some missions held significant amounts of local currency, and it was intended to help to assure that these stocks were reduced before converting more USD to local currency.

If in doubt, confer with your AO. However, usually it is safe to follow your organization's accounting policy regarding conversion of USD to local currency.

#### **M16. Use of Pouch Facilities (August 1992)**

This archaic provision dates from a time when recipients needed to use the mission's diplomatic pouch to convey items into and out of the cooperating country. Under current circumstances, this is most likely meaningless to your agreement, because you are unlikely to need to use the diplomatic pouch for any reason.

[M17 begins next page]

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### **M17. Travel and International Air Transportation (December 2014)**

*on TRAVEL COSTS*

This provision defines *travel costs* as the cost of the tickets plus lodging, subsistence and incidental expenses while in travel status, and it invokes the cost principles of 2 CFR 200 ([Subpart E](#), in general, and particularly [§ 200.474](#)) and the recipient's written travel policy. See [Notes on Travel Policy](#).

In the absence of a recipient's written travel policy, this provision requires the use of the [DSSR](#) as the standard of reasonableness for travel costs.

*on INTERNATIONAL AIR TRAVEL*

This provision also invokes "Fly America," which requires the use of US-flag carriers—when available—for international air travel and/or transport of goods. But it also invokes "Open Skies" for EU, Australia, Switzerland and Japan, which makes these countries' carriers equivalent to US-flag carriers under specific conditions. See [About the Fly America rule](#) for more information on Fly America and Open Skies.

With specific respect to international air travel, it defines the following terms:

- *International air transportation* means travel by persons or transport of cargo between the US and any other country or between any two points outside the US.
- *US flag air carrier* means a carrier named on [this list](#) OR code shares when the issued ticket (itinerary) shows travel on a flight number belonging to one of the listed US-flag carriers.

In order to assure cost allowability when US-flag or equivalent carrier is *not* available, the recipient is required to document such non-availability. The basic rules of non-availability are clearly spelled out in this provision. To assure cost allowability, BE SURE TO DOCUMENT NON-AVAILABILITY OF US-FLAG CARRIER, when applicable.

This provision must be included in subawards and contracts.

### **M18. Ocean Shipment of Goods (June 2012)**

This provision requires use of US-flag vessels when transporting goods by sea. It provides a USAID contact to help in assuring compliance.

This provision must be included in subawards and contracts.

### **M19. Voluntary Population Planning Activities – Mandatory Requirements (May 2006)**

This prohibits the expenditure of award funds on involuntary sterilizations, financial incentive to sterilize, abortion related activities, or biomedical research related to abortions or involuntary sterilizations.

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#### **M20. Trafficking in Persons (April 2016)**

It provides that USAID may terminate the award if any recipient or subrecipient employee, subrecipient or contractor *at any tier* traffics in persons, procures a commercial sex act or uses forced labor during the award period.

It itemizes a list of acts that directly support or advance trafficking.

It provides for USAID action against the recipient in the event of any violation of the terms of this provision.

If the estimated value of services required to be performed under the award outside the US exceeds \$500,000 (previously, “for awards exceeding \$500,000”), it requires annual submission of a certification of compliance AND a compliance plan, for which the provision stipulates minimum standards.

It requires the recipient to immediately notify USAID of any credible information it receives from any source alleging engagement in trafficking, and it requires full cooperation with investigations, audits and corrective actions relating to trafficking.

In April 2016, FHI 360 shared its [model policy on combatting trafficking in persons](#), and its [model anti-trafficking compliance plan](#).

This appears to implement requirements of Title XVII of [PL 112-239](#) (jump to bottom of page 463, numbered page "126 STAT. 2092"), which cracks down on trafficking in federal contracting. See [Anti Trafficking Provisions](#).

This provision must be included in subawards and contracts.

#### **M21. Submissions to the Development Experience Clearinghouse and Publications (June 2012)**

This provision defines *intellectual work* and requires that one copy of each published intellectual work and a list of all non-published intellectual works funded by the award must be provided to the AOR and to DEC (<https://dec.usaid.gov>). See also [M25, Submission of Datasets to the Development Data Library](#).

It also provides for correct allocation of publishing costs.

#### **M22. Limiting Construction Activities (August 2013)**

This provision must be included in all solicitations and awards. It requires agreements to explicitly state the specific construction activities that are authorized under the award, if any. General reference to the Program Description is prohibited; instead, approved work must be specifically described, including its location.

A separate budget line item for any approved construction activities is required.

USAID’s preference is clearly to avoid funding any construction activities under assistance awards.

*Construction* means, “construction, alteration, or repair (including dredging and excavation) of buildings, structures, or other real property and includes, without limitation, improvements, renovation, alteration and refurbishment. The term includes, without limitation, roads, power plants, buildings, bridges, water treatment facilities, and vertical structures.”

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The provision requires prior approval of changes to an approved construction budget, including transfer in or out of an approved construction line item in a larger budget.

This provision must be included in subawards and contracts.

### **M23. USAID Implementing Partner Notices (IPN) Portal for Assistance (July 2014)**

This provision establishes and requires the use of the IPN as the official means of communication between the AO and the recipient. It requires the recipient to create an online account for the IPN Portal.

Recipients may be wise to establish policy for routinely checking the IPN Portal every two weeks, in case the automated email notification doesn't work, since this provision requires the recipient to respond in writing to notices on the portal within 15 days of posting.

The introduction of this portal appears to be an attempt to mechanize the broadcast of universally applicable amendments. Questions have been raised about how these amendments will be numbered so as not to disrupt the numbering scheme for amendments that are award-specific.

### **M24. Pilot Program for Enhancement of Grantee Employee Whistleblower Protections (September 2014)**

This provision implements [41 USC 4712](#), defines whistleblowing, and establishes requirements for notifying personnel—including local national personnel in the predominant native language—of the recipient's whistleblower policy. This implies the requirement for recipients to have appropriate whistleblower policy.

This is of primary interest to HR, but becomes of significant interest to project directors due to the need to inform local national employees in the local language.

### **M25. Submission of Datasets to the Development Data Library (October 2014)**

This provision is of key importance to staff who create or maintain datasets, as defined in this provision. USAID has a clear idea of what it means by *dataset*. Review this [September 2015 presentation slide show](#) to begin to get a sense of USAID's expectations. But even better information is available in [USAID's FAQ on the Open Data Policy](#) and study [ADS Chapter 579](#).

All datasets in machine readable format that support your reports or other intellectual work funded by the award must be submitted to the DDL. Consult with the AO if you are in doubt whether any data produced by your award-funded project must be considered a *dataset*.

### **M26. Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements (April 2015)**

This implements section 743 of Division E, Title VII of [PL 113-235](#). (This section appears on page 2391 of the statute, which is page 263 of 702 of the linked PDF file, if you're into researching it).

As its title suggests, it prohibits providing federal assistance funds to organizations that require certain types of confidentiality agreements that effectively counteract the whistleblower policy

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addressed in [M24](#). Apparently, some organizations have thwarted employee whistleblowing by claiming it would violate internal confidentiality agreements. This prohibits that and requires recipients that have had such a policy in the past to notify employees that the practice has been abolished.

#### **M27. Child Safeguarding (June 2015)**

This provision aims to safeguard children who may be contacted in the course of program implementation from abuse, exploitation or neglect. It provides a set of 6 core principles that the recipient must adopt in its code of conduct.

Recipients must require subrecipients to implement codes of conduct that comply with this provision.

#### **M28. Mandatory Disclosures (July 2015)**

This provision underscores the disclosure requirements of [2 CFR 200.113](#). It requires simultaneous disclosure to the USAID Inspector General and the AO, and it provides multiple contact coordinates for submitting disclosures to the IG.

This provision must be included in all subawards and contracts under the award.

[End of Mandatory Provisions]



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## **Required as Applicable Standard Provisions**

### **RAA1. Negotiated Indirect Cost Rates - Predetermined (December 2014)**

This provision is included when/if the AO accepts a predetermined indirect cost rate for the recipient. In my experience USAID most strongly prefers the provisional/final approach to reimbursing indirect costs, described at RAA2 and RAA3. In practice, predetermined rates are not adjusted to actual rates.

See [About Indirect Cost Allocation](#) and [About the NICRA](#).

### **RAA2. Negotiated Indirect Cost Rates - Provisional (Nonprofit) (December 2014)**

This provision is more commonly used by USAID, as it allows for periodic adjustment to actual rates for reimbursement. As the title suggests, this provision is only used with nonprofit entities. It refers to the cost principles at 2 CFR 200 [Subpart E](#) and [Appendix IV](#) (which is specific to nonprofits).

If your organization is an institution of higher education (IHE), it seems likely that rate negotiation would be in accordance with 2 CFR 200 [Appendix III](#), although USAID doesn't offer a standard provision that discusses that possibility.

See [About Indirect Cost Allocation](#) and [About the NICRA](#).

### **RAA3. Negotiated Indirect Cost Rate - Provisional (Profit) (December 2014)**

As the title suggests, this provision is only used with for-profit entities. It refers to the cost principles at [FAR Subpart 42.7](#) as those applicable to negotiated indirect cost rates for for-profit recipients. It also includes a paragraph with 2 CFR 200 [Appendix III](#), although USAID doesn't offer a standard provision that discusses that possibility. Invoking the FAR cost principles is consistent with [2 CFR 700.3](#), as amended at [80 FR 55721 et seq.](#) (page 55723, bottom of middle column).

See [About Indirect Cost Allocation](#) and [About the NICRA](#).

[RAA4 begins next page]

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#### **RAA4. Exchange Visitors and Participant Training (June 2012)**

This provision requires the recipient to report via TraiNet (consult the AOR to obtain logon credentials for TraiNet) on all training accomplished outside the host country (“exchange visitor” stuff) AND on all training accomplished inside the host country where the training contact is of 2 consecutive days (any number of contact hours) or 16 or more contact hours (any number of days, consecutive or not).

*Exchange visitor* is any HCN (Host Country National) or TCN (Third Country National) traveling to the US for any purpose.

*Participant training* is any activity, whether formal or informal, where the participant “interacts with a knowledgeable professional, predominantly for the purpose of acquiring knowledge or skills for the [participant’s] professional or technical enhancement.”

This provision also requires the recipient to take numerous actions with respect to exchange visits, as follows:

- monitor the program and provide data reporting to USAID;
- provide appropriate health and accident insurance for exchange visitors;
- satisfy immigration requirements for exchange visitors;
- verify the language proficiency of exchange visitors;
- provide pre-departure orientation for travelers;
- ensure that exchange visitors read and sign USAID’s Conditions of Sponsorship;
- cooperate with the USAID mission to complete their exchange visitor security risk and fraud inquiry;
- assure compliance with Fly America restrictions on all air travel; and
- use minority serving institutions to provide instruction to exchange visitors, to the maximum extent possible.

#### **RAA5. Voluntary Population Planning Activities – Supplemental Requirements (January 2009)**

This provision is broadly applicable to all awards involving any aspect of voluntary population planning activities.

It requires that “Activities which provide family planning services or information to individuals, financed in whole or in part under this agreement, must provide a broad range of family planning methods and services available in the country in which the activity is conducted or must provide information to such individuals regarding where such methods and services may be obtained.”

This could apply to a program, even if it does not specifically provide population planning services. For example, this provision might be of concern in the case that a civil society project ends up producing and/or broadcasting PSAs on behalf of another organization’s family planning project.

It imposes extensive other restrictions on voluntary sterilization, and it prohibits abortion-related activities.

This provision must be included in subawards and contracts that involve family planning or population activities supported by the award.

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#### **RAA6. Protection of the Individual as a Research Subject (April 1998)**

This provision applies when a program includes research involving human subjects. It provides numerous protections to safeguard the rights and welfare of human subjects of research.

It's possible that such research activities could include public opinion polls and the like. In such cases, this mostly runs to protecting anonymity of informants.

#### **RAA7. Care of Laboratory Animals (March 2004)**

This provision requires the recipient to register with the Secretary of Agriculture prior to engaging in experiments involving laboratory animals. It controls the source of such animals and provides rules for care of the animals.

#### **RAA8. Title to and Care of Property (Cooperating Country Title) (November 1985)**

This provision establishes rules for management and disposition of property when title is vested in the cooperating country government. Under this fairly unusual circumstance, the recipient manages the property the same way they manage their own (or USG-owned) property, but the title remains in the host country and the gear remains in the host country when the project ends. Strict inventory controls apply to property when title is vested in the cooperating country.

#### **RAA9. Cost Sharing (Matching) (February 2012)**

This provision amplifies the requirements of [2 CFR 200.29](#), [.306](#) and [2 CFR 700.10](#).

If the recipient doesn't meet cost share commitments, the AO may reduce the amount of USAID funding OR require the recipient to refund the difference to USAID.

Source and nationality restrictions on goods and services do not apply to expenditures of cost share.

See [About Cost Sharing](#).

#### **RAA10. Prohibition of Assistance to Drug Traffickers (June 1999)**

This provision implements [22 CFR 140](#) and reserves USAID's right to terminate the project or take other action if any "participant approved by USAID" is found to have been convicted of narcotics offense or to have engaged in drug trafficking..

This is restricted to *Designated Participants* – participants or subrecipients who have been unilaterally selected by USAID. USAID approval (only) doesn't count as "designation." So unless USAID has unilaterally named the subrecipient (or participant), it is likely that this provision doesn't apply. Additionally, the provision applies only in designated countries. But note that nearly all countries in the world are so designated.

It provides a mandatory clause that must be included in all subawards.

See [Anti-Trafficking Provisions](#).

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**RAA11. Investment Promotion (November 2003)**

This provision prohibits investment promotion activities. If you have any doubt as to whether or not one of your activities involves “investment promotion,” ask your AO for instructions.

Recipient employees must be made aware of this provision when it’s included in the award agreement.

**RAA12. Reporting Host Government Taxes (December 2014)**

[Note that, as of 22 JUL 2015, the December 2014 version of this provision is still dated June 2012 in its secondary title.]

This provision requires reporting of foreign taxes (i.e. VAT) whenever such tax is paid on transactions of USD \$500 or more.

It also requires the recipient to take advantage of any tax exemptions for which the AO has provided necessary means for doing so.

**RAA13. Foreign Government Delegations to International Conferences (June 2012)**

This provision clearly defines “foreign government delegations” and “international conferences” and prohibits using USG funds to finance travel and related costs for such delegations to such conferences.

**RAA14. Conscience Clause Implementation (Assistance) (February 2012)**

This provision addresses Congress’ concern that faith-based organizations might have religious or moral objections to some aspects of a multisectoral or comprehensive approach to combatting HIV/AIDS.

It provides that recipient organizations shall not be required “to endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS” or to participate in any program to which the organization “has a religious or moral objection.” It also provides that such a dissenting organization shall not be discriminated against on the basis of such dissent. This is specifically tied to FY04 and later funding.

Legislative and litigation background on this standard provision is available in USAID’s [AAPD 14-04](#), Attachment D, if you’re into that kind of research.

**RAA15. Condoms (Assistance) (September 2014)**

This provision is specifically tied to FY04 and later funding for HIV/AIDS activities. It requires that information provided through the funded program about the use of condoms “must be medically accurate and must include the public health benefits and failure rates of such use.” It also requires that any such information must be consistent with the USAID fact sheet, “[USAID: HIV/STI Prevention and Condoms](#).”

This provision must be included in all subawards and contracts/subcontracts for HIV/AIDS activities.

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#### **RAA16. Prohibition on the Promotion or Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking (Assistance) (September 2014)**

This provision states the USG's opposition to prostitution (and, by extension, opposition to the *legalization* of prostitution). By accepting the award to which this provision is attached, the recipient or subrecipient stipulates that it is "opposed to the practices of prostitution and sex trafficking." Prohibits the use of program funds to "promote or advocate the legalization or practice of prostitution or sex trafficking."

*But note* that US NGOs and certain named international organizations are *exempt* from the stipulation described above. This is due to a Supreme Court ruling on the issue. However, non-US entities are all still subject to it.

It does allow the "provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides." I guess that means that prostitutes can receive treatment, even though the USG opposes prostitution.

This provision must be included in all subawards and contracts for HIV/AIDS activities. (That is, your non-US subs are subject to this requirement, even if you, as a US entity, are not.)

This provision appears to reflect a Congressional desire to make a strong statement about morality vis-à-vis HIV/AIDS. (Now you may infer that I have a bias on the matter.) Legislative and litigation background on this standard provision is available in USAID's [AAPD 14-04](#), Section 2.E. and Attachment D, if you're into that kind of research.

#### **RAA17. USAID Disability Policy - Assistance (December 2004)**

This provision prohibits the recipient from discriminating against people with disabilities, and it requires the recipient to demonstrate (to the extent it can within the scope of the program's objectives) a comprehensive and consistent approach for including persons with disabilities.

#### **RAA18. Standards for Accessibility for the Disabled in USAID Assistance Awards Involving Construction (September 2004)**

This provision requires that new construction and renovation projects (e.g. remodeling a rented house for use as an office or other program facility) must comply with host country or regional standards for accessibility by persons with disabilities. When no local standards exist, then the recipient must meet US or UN standards.

It provides for the following exceptions to this requirement:

- when construction is for normal maintenance, reroofing, painting or wallpapering, or changes to mechanical or electrical systems (These are not "alterations" per this provision.);
- for emergency construction (Provides some examples.); or
- if the AO determines that "compliance is technically infeasible or constitutes an undue burden or both." (Provides a definition of technical infeasibility.)

It is probably most likely that your award will not authorize construction activities. See [US SP M22](#) and [Construction Activities](#).

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**RAA19. Statement for Implementers of Anti-Trafficking Activities on Lack of Support for Prostitution (June 2012)**

This provision is specific to awards targeting victims of severe forms of trafficking that are funded by the Trafficking Victims Protection Act of 2000 (Division A of [PL 106-386](#)).

It defines “severe forms of trafficking in persons” and requires the recipient to state that it does not promote, support, or advocate the legalization or practice of prostitution. (Policy not required – just the statement.) See also note at [RAA21](#).

**RAA20. Eligibility of Subrecipients of Anti-Trafficking Funds (June 2012)**

This provision is specific to awards targeting victims of severe forms of trafficking that are funded by the Trafficking Victims Protection Act of 2000 (Division A of [PL 106-386](#)).

It requires the recipient to obtain a statement from all subrecipients that they do not promote, support, or advocate the legalization or practice of prostitution. (Policy not required – just the statement.) See also note at [RAA21](#).

It also provides an exception to this requirement for subrecipients who provide “services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.” And there’s a somewhat puzzling final statement about an organization’s statement being true by virtue of a lack of any policy regarding the issue. If you need to better understand this last sentence, I recommend that you seek the advice of a lawyer who specializes in this issue.

**RAA21. Prohibition on the Use of Anti-Trafficking Funds to Promote, Support, or Advocate for the Legalization or Practice of Prostitution (June 2012)**

This provision is specific to awards targeting victims of severe forms of trafficking that are funded by the Trafficking Victims Protection Act of 2000 (Division A of [PL 106-386](#)).

It prohibits the use of grant funds to “promote, support, or advocate the legalization or practice of prostitution. But it allows assistance that is “designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted in such victims being trafficked.”

As of June 2013, the US Supreme Court ruled that the law behind provisions 19, 20 and 21 is unconstitutional. See <http://www.pledgechallenge.org/> for background. See also USAID’s legislative and litigation analysis of this issue at [AAPD 14-04](#), Attachment D.

[RAA22 begins next page]

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#### **RAA22. Universal Identifier and System for Award Management (July 2015)**

This provision requires direct recipients of USAID grants to register in the System for Award Management (SAM) and keep their registration current for the life of the award. It also requires recipients to obtain DUNS numbers and prohibits them from making subawards to any entity that has not provided them its DUNS number.

It also makes an exception to the DUNS requirement for foreign subrecipients who receive subawards of less than \$25k or when the AO determines that getting a DUNS number would cause personal safety concerns.

This provision does not flow down to subrecipients.

See also [About 2 CFR 25](#).

#### **RAA23. Reporting Subawards and Executive Compensation (December 2014)**

This provision implements [2 CFR 170](#) (the FSRS reporting requirement under the FFATA) and requires the recipient to report each subaward action that obligates \$25k or more, except for awards to individuals and in rare cases where the AO determines that its application would cause personal safety concerns (presumably, for the recipient).

It requires the prime recipient to report each action obligating \$25k or more to first-tier subawards, using [www.fsrs.gov](http://www.fsrs.gov). Reporting is required in the month following each reportable action.

It also requires reporting total compensation of recipient executives when 80% of the recipient's total funding is from USG sources AND the recipient receives at least \$25 million annually in USG funding.

And it requires reporting total compensation of subrecipient executives when 80% of the subrecipient's total funding is from USG sources AND the subrecipient receives at least \$25 million annually in USG funding.

Apparently, this provision does not flow down to subrecipients (though the prime is required to report certain information concerning subrecipients). It largely repeats text from [2 CFR 170](#).

See also [About 2 CFR 170](#).

#### **RAA24. Patent Reporting Procedures (December 2014)**

This provision is applicable when research activities are financed or when patentable processes or practices are created under an award.

It requires the use of NIH's EDISON patent reporting and tracking system (<http://www.iedison.gov>) to report inventions as required by [37 CFR 401.14\(c\)\(1\)](#).

Such inventions must also be reported to the AOR, consistent with [37 CFR 401.14\(h\)](#).

[RAA25 begins next page]

The commentaries and analyses contained in this document are not legal opinions.

Use with caution, and seek professional advice if necessary.

**RAA25. Access to USAID Facilities and USAID's Information Systems (August 2013)**

This provision must be included when the recipient or its employees need routine physical access to USAID-controlled facilities in the US or logical access to USAID's information systems.

It provides that only US national (citizen or resident alien) employees of a US-based organization may request such access. There are many hoops to jump through with this one. Pray that you don't need such access.

It must be included in subawards and contracts at any tier that require employees or consultants to have such access.

**RAA26. Contract for DBA Insurance under Recipient Procurements (December 2014)**

This provision must be included when the recipient is expected to procure services overseas. It is required in order to comply with the Defense Base Act (DBA), which requires workers' compensation insurance for all overseas workers under contracts funded by the USG.

The primary requirement is the provision of DBA workers compensation insurance ("disability compensation and medical benefits") for workers outside the US. DBA insurance is available for purchase by USAID award recipients. Consult your insurance broker.

Exceptions may be possible; consult the AO if you think your award may be subject to a blanket waiver afforded by [AIDAR 728.305-70\(a\)](#). It appears that such a waiver would be available only where local law already provides for workers' compensation insurance that meets or exceeds DBA standards. In any event, workers must be covered.

Purchasing the insurance is probably sufficient, but the provision does require compliance with "all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at [20 CFR Parts 701 to 704](#)."

This provision must be included in all contracts for services to be performed overseas.

**RAA27. Award Term and Condition for Recipient Integrity and Performance Matters (April 2016)**

This provision must be included if the total federal share of the award may include more than \$500,000 over the period of performance.

If the total value of currently active federal awards (all kinds) exceeds \$10 million at any time during the performance period of the subject agreement, then the recipient must maintain currency of information shared in SAM ([www.sam.gov](http://www.sam.gov)).

Requires the recipient to report in SAM and FAPIIS all civil, criminal or administrative proceedings involving the recipient. Lists the specific types of proceedings. Describes reporting procedures. Defines reporting frequency. Defines terms used in the SP.

This SP implements section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)). As required by section 3010 of [Public Law 111-212](#).

[End of Required as Applicable Provisions]