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## Study Guide for USAID Standard Provisions for non-US NGOs

Brief analyses of and commentary on the provisions.

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

### Mandatory Standard Provisions

#### M1. Allowable Costs (December 2014)

This provision cites the cost principles to be used in determining allowability of costs under the agreement, according to the type of organization of the recipient:

- [2 CFR 200, Subpart E](#) – for nonprofit entities; and
- [48 CFR 31.2](#) (FAR Cost Principles) and [48 CFR 731.2](#) (AIDAR Cost Principles) – for commercial entities.

It also does the following:

- restates the fundamental requirements for cost reasonableness, necessity and allocability, and conformance with limitations in the award;
- reserves USAID's right to make final determination on the allowability of costs;
- asserts that USAID will not pay any profit or fee as part of the award; and
- requires the recipient to maintain documentation supporting all costs consistent with M2, below.

This provision must be included in all subawards and contracts that are cost-reimbursable.

#### M2. Accounting, Audit, and Records (December 2012)

This provision establishes three requirements:

- standards for the quality and retention of accounting records;
- when and how an annual independent audit of the recipient's financial records shall be conducted (see [Audit Basics](#)); and
- recipient's responsibility for monitoring subawards and contracts under the award and the principle of applying USAID standard provisions according to the nationality of the subrecipient (see [Subawards](#)).

#### M3. Amendment of Award and Revision of Budget (August 2013)

This provision stipulates that amendments to the award agreement must be in writing, signed by both parties when appropriate, and it effectively imposes the prior funder approval requirements of [2 CFR 200.308](#) for certain changes to the budget.

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

This provision stipulates that 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.

#### **M6. 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.

#### **M7. Title to and Use of Property (December 2014)**

This provision effectively duplicates the property standards of [2 CFR 200.310 - .316](#). It does the following:

- establishes the default condition that title to property acquired under the award vests with the recipient;
- defines the terms [equipment](#), [supplies](#), [real property](#) and [intangible property](#) as they are defined in 2 CFR 200;
- requires the recipient to use, maintain and dispose of property in the same way that [2 CFR 200's Property Standards](#) require this of US recipients;
- provides the AO's authority to direct, at any time during the award, that title shall vest in the USG or a third party and provides requirements for care of the property in such cases.

This provision must be included in all subawards and contracts.

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#### **M8. Submissions to the Development Experience Clearinghouse and Data Rights (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](#).

This provision also defines USAID's rights with regard to data produced or acquired under the award. Drawing much of its language from [2 CFR 200.315](#), it does the following:

- Defines the term *data*.
- Allows the recipient to retain rights to data and to copyright published materials first acquired or produced under the award.
- Requires the recipient to reserve for USAID a “royalty-free, worldwide, nonexclusive, and irrevocable right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.”
- Requires the recipient to provide USAID with a copy of any data or copyrighted material to which the USG has rights reserved as above, upon request or as provided in the award agreement.

#### **M9. 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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#### **M10. Award Termination and Suspension (December 2014)**

This provision stipulates USAID's right to terminate or suspend the award at any time. The language of this provision is consistent with the cognate language found at [2 CFR 200.338 - .342](#) and [2 CFR 700.14 - .15](#).

It also (at paragraph c.) inserts USAID's authority to terminate the award if the recipient or any of its employees (etc.) are found to have been convicted of a narcotics offense, thus implementing [22 CFR 140](#) to the extent that it can be implemented with respect to non-US persons.

#### **M11. Recipient and Employee Conduct (August 2013)**

This provision requires the recipient to maintain written policies and procedures to prevent personal conflicts of interest and to prevent its officers, employees and/or agents from using their position for personal gain or *presenting the appearance of COI*. The language here is explicit and rather onerous, given that developing countries often hold much lower standards for avoiding COI (if they don't entirely disregard COI as an issue). Review the specific language at paragraph a.

The balance of this provision is similar in effect to US MSP14, achieving the following:

- requires employees to maintain private status;
- limits the abuse of employee's exemptions (if any), prohibiting sale of personal property and referencing [22 CFR 136](#);
- limits employees outside business dealings (including investment, loans, employment or business ownership) to those that comply with the host country's laws;
- requires employees to abide by local conventions, customs, and institutions, abide by laws and not interfere in its internal political affairs;
- requires the recipient to coordinate corrective action with USAID in the event that an employee fails to comply with these requirements. This can include the expulsion and return to country of origin for employees who are not nationals of the host country; and
- retains USAID's authority to expel US nationals from the cooperating country when doing so is in the best interest of the US.

This provision must be passed down in its entirety to subrecipients (which sort of goes without saying, as it's a mandatory provision...).

#### **M12. Debarment and Suspension (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 not knowingly transact or conduct business with entities that are identified as excluded parties in SAM (System for Award Management, [www.sam.gov](http://www.sam.gov)), consistent with the provisions of [Subpart C of 2 CFR 180](#).
- The recipient must notify the AO if they become debarred or suspended.
- The term *principal* is defined.

The entire provision must be included in all subawards and contracts (with non-US entities).

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### **M13. Disputes and Appeals (December 2014)**

This provision basically replicates the terms of [2 CFR 200.341](#) and [2 CFR 700.15](#), as follows:

- disputes are decided by the AO, whose decisions are final unless appealed to USAID's Deputy Assistant Administrator, Bureau for Management;
- decisions made by the Deputy Assistant Administrator are final; and
- subawardees and contractors have no right to submit claims directly to USAID, and USAID assumes no liability for third party claims against the recipient.

### **M14. 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.

### **M15. Trafficking In Persons (April 2016)**

This 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.

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#### **M16. 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.

#### **M17. 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.

#### **M18. 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.”

#### **M19. USAID Disability Policy - Assistance (June 2012)**

This provision prohibits discrimination against people with disabilities in the implementation of the funded activities. (It is a much simpler statement of this requirement than that provided by the US SP RAA17, but the effect is substantially the same.)

#### **M20. 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.”

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.

Commentaries on USAID Standard Provisions for non-US NGOs – ADS 303mab

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#### **M21. 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.

#### **M22. 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.

#### **M23. 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*.

#### **M24. 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 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.

Commentaries on USAID Standard Provisions for non-US NGOs – ADS 303mab

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**M25. 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.

**M26. 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. Advance Payment and Refunds (December 2014)**

This provision is included when/if the AO authorizes advance payments. It requires the recipient to deposit advances in a reputable bank and to be able to account for receipt and expenditure of funds and interest earned (if any). In essence, it effectively transmits the requirements of [2 CFR 200.305\(b\)](#) to the non-US recipient.

This provision requires that advances must be maintained in interest-bearing accounts, except under certain conditions delineated in the provision, and it stipulates how interest earned must be returned to the USG.

It provides fairly detailed instructions on how and when the recipient must request advances and what reporting is required in order to support each request for additional funds.

And it calls for the immediate return of all unexpended advances upon expiration or termination of the award.

It also requires the recipient to follow these same rules when advancing cash to subrecipients and/or field offices of the recipient.

### **RAA2. Reimbursement Payment and Refunds (December 2014)**

This provision is used when payment is made strictly by reimbursement of reported actual costs. It provides specific instructions for reporting expenses and requesting reimbursement. And it retains USAID's right to withhold or offset payments or require refund of payments for any amounts of disallowed costs. In the extreme, USAID may require the refund of the entire amount of funds paid, pending resolution of outstanding audit findings and/or settlement claims.

### **RAA3. Indirect Costs – Negotiated Indirect Cost Rate Agreement (NICRA) (December 2014)**

As the title suggests, this provision is only used when the recipient has a current NICRA with the USG. It repeats verbatim the definitions of *Indirect (Facilities & Administration (F&A)) costs*, *Indirect cost rate proposal*, and *Nonprofit organization* ([2 CFR 200.56](#), [.57](#), and [.70](#), respectively) and stipulates the use of the provisional/final approach to indirect cost reimbursement (see [2 CFR 200 Appendix IV](#), Section C.2.f.) It calls out [2 CFR 200.414](#) as the guide to negotiating indirect cost rates, which in turn calls out the applicable appendices of 2 CFR 200. And it reiterates that the cost principles governing allowable costs are identified in [SP M1 Allowable Costs](#).

It allows for adjustment of rates during the fiscal year in needed to prevent substantial under- or over-payment; it gives the AO authority to negotiate “billing rates” other than NICRA provisional rates; it provides for resolution of disputes, should they arise.

Presumably (but not verified by my experience), this provision is also used when USAID and the recipient have agreed to use a *de minimis* indirect cost rate of 10% of MTDC, as described at [2 CFR 200.414\(f\)](#).

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

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#### **RAA4. Indirect Costs – Charged As A Fixed Amount (Nonprofit) (June 2012)**

This provision allows USAID to negotiate a fixed amount of payment in lieu of reimbursement of actual indirect costs. It somewhat strictly stipulates what costs may/must be considered as indirect costs, and it suggests the approach to reasonably agreeing a fixed amount for the award. It then requires a schedule for payment of the fixed amount, and it requires that the award specify the categories of costs that are covered by the fixed amount, except that the AO retains the right to adjust the fixed amount to equitably charge indirect costs (presumably, in the event that operating conditions significantly change the nature of the work supported by the award).

#### **RAA5. 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 non-US 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](#).

#### **RAA6. 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](#).

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#### **RAA7. Subawards (December 2014)**

This provision defines *subaward* using the language of [2 CFR 200.92](#). It also implements [2 CFR 200.331](#), though in an abbreviated form, stipulating that the recipient is responsible for the work awarded to subrecipients and that the recipient must do the following:

- vet subrecipients to assure that they are responsible and are not excluded (suspended or debarred or listed on a terrorist list) as defined in the SPs [M12](#) and [M14](#); and
- use a sound and complete written agreement to bind the subrecipient to specific terms and conditions, including a program description, budget, period of performance, and all terms and conditions of the prime award agreement.

The recipient may not make subawards to the governments of or entities controlled by the governments of countries ineligible for assistance under the FAA, except with the AO's written approval. Presumably, the recipient can trust USAID's geographic code 937 (or 937 and 110) as defining the list of eligible countries. See [USAID Eligibility Rules](#).

USAID's language from US SP M6 that requires that subrecipients and contractors engaged by the recipient have no relationship with USAID and no right to submit claims directly to USAID is carried in [non-US SP M13 Disputes and Appeals](#).

See also [Subawards](#).

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#### **RAA8. 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.

#### **RAA9. 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.

#### **RAA10. 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.

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### **RAA11. Patent Rights (June 2012)**

This provision implements [2 CFR 200.315](#) as it concerns *patents*, stipulating the following:

- The recipient may retain all rights and interest in patents created or acquired under the award, but must reserve a “nonexclusive, nontransferable, irrevocable, paid-up license” on behalf of the USG to use the patent.
- The recipient must recognize the USG’s involvement in the invention in any US patent application.
- The recipient must disclose each invention to [NIH’s EDISON system](#).

The provision defines the terms *invention* and *subject invention*, and it specifies the conditions when the USG may obtain title to the invention.

This provision must be included in subawards and contracts “for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization,” and the recipient must retain all rights provided for the USG in this provision. Conversely, the recipient *may not* obtain *more* rights to subrecipient patents than are provided for in this provision.

### **RAA12. 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.

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### **RAA13. 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.

### **RAA14. Cost Share (June 2012)**

This provision implements and 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.

See [About Cost Sharing](#).

### **RAA15. Program Income (December 2014)**

This provision implements [2 CFR 200.307](#) in a much abbreviated form. It defines *program income* as the term is defined at [2 CFR 200.80](#) and tells how to account for program income.

- It requires the use of the additive method, unless the award specifies otherwise.
- However, it prohibits for-profit entities from using the additive method and requires them to use the deductive method.
- It allows the deduction of costs of generating program income, as long as those costs have not been charged to the award and are allowable under the cost principles.
- It stipulates that the recipient has no obligation to USAID for program income earned after the project period, unless the terms of the award provide otherwise.

### **RAA16. 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.

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#### **RAA17. Standards for Accessibility for Persons with Disabilities 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](#).

#### **RAA18. Protection of Human Research Subjects (June 2012)**

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.

#### **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.

Commentaries on USAID Standard Provisions for non-US NGOs – ADS 303mab

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Use with caution, and seek professional advice if necessary.

### **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. 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.

### **RAA23. 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.



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#### **RAA24. 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.

#### **RAA25. 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.

#### **RAA26. Limitation on Subawards to Non-Local Entities (July 2014)**

This provision implements USAID policy, which may or may not be based on legislative requirements. Note that the ADS reference in the applicability statement of the provision (to ADS 303, section 303.3.6.6.a.(2)) appears to be incorrect, as of the 22 July 2015 edition of ADS 303. However, the referenced text still appears in ADS 303, at section 303.3.6.5.b.(2) Restricted Eligibility to Local or Regional Entities.

The upshot of this provision is that the recipient certifies to being a local entity itself and must restrict subawards to local entities.

*Local entity* is defined by four conditions, all of which must be met.

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**RAA27. 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.

**RAA28. 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]