

October 12, 1999

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: M/OP, Rodney W. Johnson, Director

SUBJECT: PSC Policy

CONTRACT INFORMATION BULLETIN 99 - 22

Due to repeated questions regarding the application of FAM provisions to USAID PSCs, we believe it would be helpful to restate the basic regulatory framework of USAID's personal services authority and its relationship to various provisions of the Foreign Affairs Manual ("FAM"), as well as benefits administered by other agencies.

1. For salary, meritorious step increases, leave and other terms of employment under the control of USAID, the governing Agency regulations on PSCs are AIDAR Appendices D and J and ADS 495 - Foreign Service Nationals, **not** 3 FAM 7000 or 3 FAM 8200. While USAID's general policy is to be consistent with the FAM, especially on foreign national PSCs, the source of agency policy and regulations for USAID PSCs is the AIDAR and ADS.

2. The provisions in 3 FAM 7000 - Foreign Service National Personnel and 3 FAM 8200 Appendix A (Old 3 FAM 123) - Methods of Employment - do **not** apply to USAID's PSCs, unless the AIDAR or ADS makes a particular FAM provision applicable. Any reference in those FAM provisions to foreign service national ("FSN") employees or PSCs is to be read as **not** applying to USAID PSCs. For example, ADS 495 applies certain provisions of 3 FAM 7200 to USAID's foreign national PSCs. On the other hand, 3 FAM 7224.2-3 - U.S. Citizenship - provides that an FSN employee who has U.S. citizenship must be terminated. Since it has not been made applicable by the ADS or the AIDAR, that provision does not apply to USAID PSC positions.

We are in the process of amending 3 FAM 7000 to make it clear that it does not apply to USAID PSCs. We are also revising the AIDAR Appendices and reviewing ADS 495 to make sure that we have only applied those 3 FAM 7000 provisions that are necessary.

3. The following benefits in the FAM are **not** under the control of USAID. They are administered by the Department of State and, consequently, the FAM provisions are controlling:

a) Employee association and commissary privileges. U.S. citizen PSCs are entitled to employee association and commissary privileges under 6 FAM 500 - Employee Associations.

b) Pouch service. USAID U.S. citizen PSCs are entitled to pouch service on the same basis as direct-hire USAID employees under 5 FAM 340 - Diplomatic Pouch Mail.

c) Health room privileges. U.S. citizen PSCs are entitled to health room privileges on the same basis as direct-hire USAID employees under 3 FAM 1900 Appendix B (Old 3 FAM 680) - Medical and Health Program.

4. There are a number of benefits under the control of other agencies:

a) APO privileges. U.S. Citizen PSCs are eligible to use the military postal services on the same basis as USAID direct-hire employees under the regulations of the Military Postal Service Agency of the Department of Defense.

b) Federal Workers' Compensation ("FECA"). PSCs (regardless of citizenship) are Government employees for purposes of the Federal Employees Compensation Act, which is administered by the Division of Federal Employees' Compensation of the Department of Labor.

c) Unemployment Compensation. Under a recent ruling of the Department of Labor (Unemployment Insurance Program Letter No. 41-99, August 3, 1999) PSCs are **not** eligible for the Unemployment Compensation for Federal Employees Program ("UCFE").

2 FAM 222 EMPLOYEES OF DIPLOMATIC MISSIONS

2 FAM 222.1 PRACTICE NOT UNIFORM ABROAD

With the exception of the situation relating to U.S. nationals and permanent residents (2 FAM 231.2), full diplomatic immunity is granted in the residents (2 FAM 231.2), full diplomatic immunity is granted in the United States to all members of a diplomatic mission who are notified to and accepted by the Department of State. Practice abroad is not uniform in this respect, however. Many governments refuse to accord immunity to members of diplomatic missions other than diplomatic officers, whether they are nationals of the sending state, of the receiving state, or of a third state. Others grant immunity to all except their own nationals.

2 FAM 232.1-4 NATIONALS OR PERMANENT RESIDENTS OF UNITED STATES

(TL: GEN-268; 2-28-91)

The general rules set forth above assume that the staff members of the diplomatic mission involved are nationals of the sending country or of some third country. Traditionally, governments are unwilling to surrender any jurisdiction over their own nationals, and the modern treaty regime states precise rules on this point. The United States, as a matter of policy, does not normally accept the accreditation of its own nationals or permanent residents as diplomatic agents but, were it to do so, such diplomatic agents would enjoy inviolability and jurisdictional immunity only in connection with the performance of official acts. The family members of diplomatic agents enjoy no privileges or immunities if they are U.S. nationals. Members of the administrative and technical staff, members of the service staff, and family members of these persons enjoy no privileges and immunities if they are nationals or permanent residents of the United States.

Immunities should not be claimed for Foreign Service national employees or servants who are nationals of the country in which the consular posts are located. When there is a consular convention between the United States and the country concerned, the local employee will be accorded the immunity specified in the convention.

**3 FAM 1900 APPENDIX B OLD 3 FAM 680,
MEDICAL AND HEALTH PROGRAM
3 FAM 680 MEDICAL AND HEALTH PROGRAM
3 FAM 681 GENERAL PROVISIONS
3 FAM 681.1 APPLICABILITY**

b) Applicability is extended to designated U.S. Civil Service employees who are assigned abroad on temporary duty in accordance with Section 685.3. The employee's agency, department or bureau must have elected to provide such medical benefits and have entered into agreement with the Office of Medical Services of the Department of State.

c) The following agencies participate by formal agreement in the Medical and Health Program of the Department of State:

Agency for International Development (USAID), includes PASA.