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**State Cable 232440: Privileges and Immunities for USAID
Personal Services Contract Employees**

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PAGE 01 STATE 232440 071628Z
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ADM AID ATTN: EMBASSY ADMINS, COUNSELORS (INFO ONLY)

E.O. 12958: N/A

TAGS:

SUBJECT: PRIVILEGES AND IMMUNITIES FOR USAID PERSONAL
SERVICES CONTRACT EMPLOYEES

UNCLASSIFIED

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PAGE 02 STATE 232440 071628Z

1. FOR USAID EXOS: PLEASE PASS TO EMBASSY ADMIN
COUNSELORS.

2. ON NOVEMBER 6, 2000, THE DIRECTOR GENERAL APPROVED NOTIFICATION OF USAID'S PERSONAL SERVICES CONTRACT EMPLOYEES (PSCS) AS MEMBERS OF THE USAID MISSION, INCLUDING AS MEMBERS OF THE ADMINISTRATIVE AND TECHNICAL (A&T) STAFF OF EMBASSIES, WHERE THE USAID MISSION IS PART OF THE U.S. EMBASSY. THEREFORE, USAID PSCS NO LONGER HAVE TO BE INDIVIDUALLY APPROVED BY THE DIRECTOR GENERAL UNDER 2 FAM 221.2 (REVISED) AND CAN BE NOTIFIED IN THE SAME WAY AS USAID DIRECT-HIRE EMPLOYEES ARE NOTIFIED.

3. THE DIRECTOR GENERAL'S APPROVAL DOES NOT, REPEAT, NOT EXTEND TO LOCAL NATIONALS OR PERMANENT RESIDENTS IN THE HOST STATE; SUCH PERSONNEL ARE NOT GRANTED PRIVILEGES AND IMMUNITIES UNDER THE VIENNA CONVENTION. THE APPROVAL DOES NOT, REPEAT, NOT INCLUDE INDEPENDENT/NON-PERSONAL SERVICES CONTRACTORS (OR THEIR EMPLOYEES) OF USAID; THEY CONTINUE TO REQUIRE SPECIFIC APPROVAL UNDER 2 FAM 221.2 (REVISED).

4. THE DIRECTOR GENERAL'S APPROVAL WAS BASED ON THE PSCS MEETING THE FOUR REQUIREMENTS IN 2 FAM 221.2 FOR CONTRACTOR NOTIFICATION.

5. THE FIRST IS THAT ACCREDITATION OF SUCH PERSONNEL IS NECESSARY TO OVERCOME SIGNIFICANT BARRIERS OF TO
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PAGE 03 STATE 232440 071628Z
ENTRY OR RESIDENCE RECEIVING STATE OR SECURITY CONCERNS WARRANT ACCREDITATION AS EVIDENCED BY THE WORK PERFORMED AND/OR THE LEVEL OF THE SECURITY CLEARANCE. THE DIRECTOR GENERAL'S APPROVAL WAS BASED ON A REQUEST BY USAID WHICH CITED SECURITY CONCERNS AND ENTRY BARRIERS FACED BY PSCS TO THE SAME EXTENT AS USAID'S DIRECT-HIRE EMPLOYEES. MOREOVER, MOST USAID'S PSCS HAVE SECURITY CLEARANCES. THEREFORE, POSTS MAY RELY ON THE DIRECTOR GENERAL'S APPROVAL AND NEED NOT ADDRESS THIS REQUIREMENT IN DECIDING WHETHER OR NOT TO NOTIFY A PARTICULAR USAID PSC.

6. THE SECOND REQUIREMENT IS THAT THE INDIVIDUAL IS ASSIGNED TO AND WORKING OUT OF THE MISSION AND

PERFORMING DIPLOMATIC AND CONSULAR SUPPORT FUNCTIONS. THIS IS THE SAME REQUIREMENT THAT A POST APPLIES IN DETERMINING WHETHER TO NOTIFY USAID DIRECT-HIRE EMPLOYEES AND THE POST SHOULD APPLY THE SAME ANALYSIS AND PROCEDURES AS IT DOES TO USAID'S DIRECT-HIRE FOREIGN SERVICE EMPLOYEES IN DECIDING WHETHER OR NOT TO NOTIFY A PARTICULAR USAID PSC.

7. THE THIRD REQUIREMENT IS THAT THE INDIVIDUAL'S EMPLOYMENT RELATIONSHIP, PARTICULARLY THE CONTRACT PROVISIONS, PROVIDE ADEQUATE DEPARTMENTAL AND CHIEF-OF-MISSION CONTROL OVER THE INDIVIDUAL, INCLUDING A PARTICULAR RIGHT OF WITHDRAWAL FROM THE HOST COUNTRY OF THE INDIVIDUAL. THE USAID ACQUISITION REGULATIONS REQUIRE THAT ALL PSC CONTRACTS HAVE A "CONTRACTOR-MISSION RELATIONSHIP" CLAUSE. THAT MANDATORY CLAUSE THAT MEETS THIS REQUIREMENT AND POSTS

UNCLASSIFIED

UNCLASSIFIED

PAGE 04 STATE 232440 071628Z
NEED NOT ADDRESS THIS REQUIREMENT IN DECIDING WHETHER OR NOT TO NOTIFY A PARTICULAR USAID PSC.

8. THE FOURTH REQUIREMENT IS THAT THE PROJECTED LENGTH OF STAY OF THE INDIVIDUAL IS EQUAL TO OR GREATER THAN THE MINIMUM LENGTH OF STAY FOR WHICH DIPLOMATIC OR CONSULAR PERSONNEL ARE ACCREDITED. A PSC CONTRACT OF A YEAR OR MORE TYPICALLY MEETS THIS REQUIREMENT.

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