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**GC's Description of Inherently Governmental Functions re: teams
(not a legal determination)**

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Olivier and Larry, this is my follow-up on yesterday's meeting regarding fellows, TAACS and PASA/RSSAs and their authority under USAID guidance to perform inherently governmental functions.

By way of summary, private sector fellows can not perform inherently governmental functions, while TAACS and RSSA/PASAs can perform those functions. TAACS from PVOs, however, may not supervise USDH employees. While PASAs and RSSAs who are direct hire employees of their parent agency may perform all the work normally performed by a USDH employee in USAID, the PASA/RSSA standard provisions essentially bar them from performing many inherently governmental functions (including supervising USAID employees) without the prior approval of USAID.

I. FELLOWS

Fellows from the private sector can not perform inherently governmental functions. This is clear from ADS 400 Interim Update #3 (SUBJECT: Implementation of Policy Guidance Concerning Fellows) that says in Section 5a: " PRIVATE SECTOR FELLOWS. Fellows may not perform inherently governmental functions." (The guidance also says in 5b: "GOVERNMENT EMPLOYEE FELLOWS. Fellows who are direct-hire employees from other Government agencies, e.g. the ComSci fellows, may be assigned work in accordance with Agency policies regarding direct-hire government employees detailed to USAID.")

(Note the summary description of inherently governmental functions in Section 5a of the fellows guidance. It is, I think, a better summary than the one you are using in 201.3.4, Step 2. Whatever summary you use should probably have a cross reference to OFPP Policy Letter 92-1 and mention that GC should be consulted when there are questions regarding

whether certain functions are inherently governmental.)

II. TAACS

TAACS (Technical Advisors in AIDS, Child Survival and Population) can perform inherently governmental functions but TAACS from PVOs may not supervise USDH employees nor have access to cost analysis and financial information that may benefit or give unfair advantage to their employers. This is clear from section 10 of ADS 400 Interim Update #2 (SUBJECT: Appropriate Use and Funding of USAID's Non-Direct Hire Workforce), which says:

"Technical Advisors in AIDS, Child Survival, and Population (TAACS) are program-funded technical specialists who may be assigned direct hire duties and responsibilities, subject to the restrictions cited in the USAID appropriations act. Congress specifically authorized the use of funds for TAACS programs in the 1987 appropriation act and has renewed this authority every year since. The act authorizes the acquisition of personal services from other agencies, local governments, universities and private voluntary organizations for program activities. An employer/employee relationship is established with USAID managers, and except as noted below, TAACS may perform inherently governmental functions -- those functions normally reserved for direct hire employees of the Agency. TAACS that are direct-hire employees of another federal agency count against their parent agency's FTE. However, most TAACS are now from PVOs and do not encumber any FTE. Services are obtained through contracts with the parent organization. TAACS from PVOs may not supervise USDH employees nor have access to cost analysis and financial information that may benefit or give unfair advantage to their employers. It is the policy of the Agency that the services of government employees performing TAACS services be obtained by negotiating a detail-in, as discussed earlier in this notice. Under the terms and conditions of a detail-in there are no additional overhead costs. Only if a detail arrangement cannot be negotiated should a TAACS agreement be made with another federal agency under a PASA or RSSA. Similarly, individuals from private and voluntary organizations performing TAACS services should be employed under PSCs, and a TAACS agreement with the parent organization should be used only if a PSC with an individual cannot be used because of funding or other reasons. Employees obtained under TAACS authority must be cleared in advance by the DAA/M/HR."

See also section 5 of ADS 200 Interim Update #4 (Subject: Technical Advisors in AIDS, Child Survival and Population), which confirms the above.

III. PASA/RSSAs

The following is from section 6 of Functional Series 400 Interim Update #2 (SUBJECT: Appropriate Use and Funding of USAID's Non-Direct Hire Workforce):

"When PASAs and RSSAs are direct hire employees of their parent agency, they may perform all the work normally performed by a USDH employee in USAID. Contract employees secured under a PASA or RSSA agreement are generally subject to the same restrictions and guidance as USPSC employees."

Note, however, the following from ADS Mandatory Reference 306 (PASA/RSSA Standard Provision, Section 11):

"Restrictions on PASA and RSSA Personnel - Except as specifically provided in writing by USAID, PASA and RSSA personnel shall not: officially represent USAID at any function; approve policy documents; supervise USAID employees; negotiate, review, or sign contracts on behalf of USAID; certify vouchers; select or recruit USAID employees; or prepare USAID funding or budget documents."

John