

USAID POLICY DETERMINATION

GUIDELINES: ENDOWMENTS FINANCED WITH APPROPRIATED FUNDS

I. INTRODUCTION

Recent legislative changes greatly expand USAID's ability to fund endowments. Endowments provide another mechanism for achieving USAID's development goals which complements our more traditional assistance forms. Unlike traditional mechanisms which focus on financing goods and services in furtherance of foreign assistance objectives, endowments allow us to support more directly an entity whose purpose is to further such objectives.

However, endowments also present a series of unique difficulties that must be thoroughly assessed before a mission or bureau makes a funding decision. These problems are often exacerbated because of a lack of familiarity with endowments in many developing countries, and because the legal and regulatory environment in such countries may not provide an adequate framework for the establishment and oversight of such funds. In many cases, design of an endowment may also be very labor intensive.

These guidelines are intended to assist missions and bureaus in their analysis and funding of endowments, and to ensure that relevant factors are adequately taken into account. Some of the main issues covered are: the objectives which can be achieved through the use of endowments; characteristics of organizations for which endowments are appropriate; financial management of both the investment fund and program income; application of legislative restrictions; mechanisms and appropriate degree of oversight; and termination of the endowment.

II. BACKGROUND

Prior to 1990, USAID's authority to grant funds for the establishment of endowments was severely restricted. Federal appropriations law generally prohibits a grantee from retaining interest earned on appropriated dollars. As a result, there was no practical means for establishing endowments with dollars appropriated to USAID, or with local currency acquired by the exchange of these dollars.

The only way that endowments could be established with USAID funds before 1990 was with explicit congressional approval. This mechanism was only occasionally used.

The other mechanism for establishing endowments in conjunction with USAID activities was to use host country owned local currency. Because these funds are not appropriated to USAID or owned by USAID, they are not subject to federal appropriations laws (or most other statutory restrictions on the use of USAID funds). Local currency endowments have become increasingly common, particularly over the last decade, supporting programs in education, environmental resource management, and agricultural research.

Legislation enacted as part of the FY 1990 foreign assistance appropriations act took the first step forward in permitting the use of appropriated funds for funding endowments. Section 584 of that act permitted non-governmental organizations (NGOs) to retain interest on, and thus establish endowments with, local currency acquired through the exchange of appropriated dollars. The legislation was directed mainly at transactions involving debt swaps, whereby USAID provides a grant to an NGO to purchase discounted debt of a developing country, which is then redeemed by the host government with local currency funds. Section 584 made possible the retention of interest earned on the local currency funds acquired through debt swaps, and as a by-product, also made possible the establishment of endowments with these funds. The Section 584 authority was continued in fiscal years 1991 and 1992.

In FY 1993 Congress significantly expanded the authority, to permit non-governmental organizations which were contractors or grantees of USAID to retain interest on appropriated dollars retained as dollars as well as those converted into local currency, and to establish endowments with these funds. (Section 567 of the FY 1993 foreign assistance appropriations act.) The authority was extended to apply retroactively to prior year funds as well as FY 1993 funds. Congress reenacted this provision in the FY 1994 appropriations bill as Section 534. (Section 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994; P.L. 103-87.) With this authority, NGO's may now be permitted to establish endowments directly with funds granted to them by USAID, without first having to convert the funds to local currency.

III. SCOPE AND AUTHORITY

A. Purpose of guidelines. The funding of endowments involves a number of budgetary, policy, and legal issues not commonly encountered in more traditional forms of assistance. These guidelines are intended to highlight and provide guidance on these issues in order that endowments may be established in a manner consistent with sound programmatic, budgetary, and financial management practices, and the laws governing the use of appropriated funds.

B. Scope and applicability. These guidelines describe USAID's policies governing the use of grant funds for financing endowments; the organizations eligible to receive endowments; and the various administrative and contractual procedures required in order to establish, maintain, audit, draw down, evaluate and close an endowment. For

the purposes of these guidelines, an endowment is considered to be the capitalization of a fund, independent from USAID, the objective of which is to generate income to maintain activities of a private, non-profit institution that are consistent with the purposes of the Agency's authorizing legislation.

The guidelines apply to all endowments funded with appropriated dollars, including those which have been converted to local currency through debt swaps or normal exchange procedures. The guidelines do not apply to the funding of endowments with host country-owned or NGO-owned local currency. However, many of the issues discussed herein are equally applicable to all endowments, and the guidelines may therefore be useful regardless of the funding source involved.

Endowments are just one of the circumstances in which interest may be retained under the new legislative authority. Separate guidance will be issued on the retention of interest outside the context of endowments.

C. Modifications to guidelines. Modifications to these guidelines may be needed as USAID gains experience with the endowment program. The Bureau for Policy and Program Coordination (PPC) encourages interested parties to identify problems and to suggest needed changes.

IV. DESIGN AND APPROVAL OF ENDOWMENTS

Because the authority to establish endowments is new, the Agency's experience in this area is somewhat limited. U.S. foundations can often be an invaluable source of expertise to assist us in developing activities that involve endowments.

To ensure that the experience being acquired is adequately shared throughout the Agency and its overseas missions, and that this guidance can be updated and refined to reflect innovations in the field, all endowments must be approved in USAID/W at this time. Regional Bureaus will be responsible for approving endowments according to their normal project approval processes. PPC and the Office of General Council (GC) should participate in all reviews. PPC will review this policy in two years to determine whether Washington approval continues to be necessary.

In most cases, funds for an endowment for an NGO will be obligated through a grant, and the approval process should therefore follow the procedures applicable to all such grants. However, endowments have a number of characteristics that differ from traditional NGO grant activities, and that raise significant policy issues which should be addressed. The issues set forth below should be specifically considered during the approval process and documented.

A. Consistency with USAID strategy. A proposal for an endowment must be consistent with the objectives and approved strategies

for the country, region, or sector in which the funds are to be expended.

B. Objectives. An endowment should be directed at achieving objectives not attainable through traditional assistance modes. Some possible justifications for endowments are cited below. One or more should be included in the rationale for a proposed endowment, and the bureau or mission should assure itself that such objective(s) are achievable under the circumstances at hand.

1. An endowment may be used to broaden and enhance the funding base of an NGO engaged in activities which have a long-term horizon and where funding by short-term grants or a series of such grants is likely to be insufficient to realize the full program objectives.
2. The financial stability provided by an endowment may insulate the endowed organization from unpredictable government and donor agency budget fluctuations. An endowment may thus enable an NGO to become more independent and self-reliant in identifying and solving environmental, economic, and social development problems.
3. An endowment may allow the recipient organization to attract other funds by increasing donor confidence, thus leveraging the USAID funds.
4. USAID financing of an endowment may be used to encourage the establishment of philanthropic principles in countries where such principles are less well-established.
5. An endowment may allow an activity to be institutionalized and continue beyond USAID's funding, when it otherwise may not have been.
6. An endowment is one mechanism by which USAID may continue development strategies through international or indigenous organizations upon termination of an USAID presence in the country and/or the termination of USAID direct assistance activities.

C. Budgetary impact. In general, the establishment of an endowment entails a much more rapid up front outlay of funds than traditional program activities, and in some cases may involve a relatively large amount of funds. Although the budgetary impact can be lessened somewhat by capitalizing an endowment over more than one year, it is still greater than if funds were expended over a period of time for the activities themselves.

The bureau or mission granting the funds should determine whether an endowment is more cost effective than multi-year support of the organization through technical assistance and institutional and project support, and whether the benefits to be gained

by establishing the endowment outweigh the benefits of the alternative uses of the program funds, which in many cases will have less adverse budgetary implications.

D. Characteristics of the NGO. The following characteristics must be demonstrated by an organization for which an endowment is proposed:

1. In accordance with the statutory provision authorizing endowments, the organization receiving the endowment must be non-governmental. The purpose behind requiring that the organization be "non-governmental" is to ensure that it is independent from the government. Some government involvement is acceptable, as long as the government does not control the organization. For example, the government may be represented on the board of directors of the organization, but only by a minority of the board members.
2. Under the usual circumstances, the organization will also be non-profit.
3. The organization's activities must fall within the purposes for which the USAID funds have been authorized, or the documentation establishing the endowment must limit the use of the USAID funds to such purposes.
4. If the organization is not a registered PVO, it must meet pre-award survey requirements designed to ensure adequate accountability of funds.
5. The organization must have a demonstrated capacity to implement the program which the endowment is to fund, or controls must be built in to ensure that this capacity is developed. In some cases, USAID may want to provide a separate grant to a well-established NGO to help with the institutional development of a beneficiary NGO that does not have a proven track record.

If the beneficiary organization requires a high degree of monitoring and oversight (e.g., it's new or weak), this may mean that an endowment is not an appropriate mechanism for providing assistance to it. In such cases, the mission or bureau should consider providing traditional grant funding for a number of years until the organization has established a track record, and then evaluate whether an endowment makes sense.

E. Recipient financial participation. USAID's current guidelines (PD-16) encourage the largest reasonable and possible financial participation of the recipient in financing a project, establishing a reference point of twenty-five percent of project costs. In some instances, however, especially for newly established NGO's, participation of less than twenty-five percent may still be substantial, given the NGO's resources. It is also possible that no financial participation may be appropriate if the NGO provides a critical and non-substitutable service in achieving bilateral assistance objectives. The USAID official authorizing an endowment will make the final determination of the appropriate level of financial participation.

F. Financial management considerations. Unlike the case of grant expenditures, the financial considerations of endowments must be addressed from two perspectives: the adequacy of controls related to the expenditure of funds by the NGO for program activities, and the adequacy of financial arrangements and controls related to the investment of the endowment fund itself. A number of different arrangements are possible in establishing an endowment, and often these arrangements are driven by these financial considerations. Issues relating to both categories of financial management, and suggestions for mechanisms for building in controls, are set forth below.

1. Program expenditures. Legally, the establishment of an endowment is analogous in many ways to a cash transfer. The purposes of the grant are accomplished at the time the endowment is established; therefore, statutory and regulatory restrictions on the use of funds, such as source/origin, do not apply. (However, USAID may apply some restrictions as a matter of policy. See Section V.C. below.) The converse of this is that USAID may not actively participate in the implementation of program activities.

(a) Bureaus and missions must therefore assure themselves that the beneficiary of the endowment can adequately implement its programs and manage and account for the funds it expends without detailed oversight by USAID.

(b) If the organization is not a registered PVO, a pre-award survey must be performed to ensure adequate accountability of funds.

(c) If the organization is found to have inadequate financial controls in place, or it is being newly created, controls must be built into the program design.

2. The investment fund. An endowment by its nature involves a relatively large amount of appropriated funds, largely outside of USAID's control, which will continue to exist for many years, often beyond the period of USAID oversight. If the endowment is to succeed, the return generated by the endowment, together with other available resources, must be adequate to support the program of the beneficiary organization, and the possibilities for misuse must be minimized. The arrangements for management of the fund will vary with the size of the fund, the track record of the beneficiary NGO, and whether it is composed of dollars or local currency.

In order to assure that the financial controls over the investment fund are adequate, the following points should be addressed during the program design and approval process:

(a) Country of investment. Legally, there is no restriction on where the funds may be invested. However, because this is a new authority which will be subject to close scrutiny, we are requiring that the funds be invested in financial instruments offered in the U.S. through a U.S.-based financial intermediary. This still allows investments in global offerings. For example, funds may be invested in a mutual fund that includes emerging market or European securities, as long as the mutual fund is offered in the U.S. through a U.S. broker. Investment options in the U.S. markets are sufficiently broad that this requirement should not hamper development of a sound investment strategy for the endowed organization. In fact, even absent this restriction, one could expect that the bulk of funds of an endowed organization looking for long-term stability would be invested in the U.S.

A small amount of funds needed for current local operating expenses will necessarily be held locally, probably in an interest bearing account.

Endowments derived from debt swaps are not subject to this requirement that all long-term investments be in the U.S. These are local currency funds by their nature and thus may be invested locally.

(b) Conflicts of interest. An important concern in the establishment of endowments is conflict of interest. The members of the board of directors, a trustee, or financial manager all may have potential conflicts with respect to either investment or expenditure of the funds. When the funds we grant are required to be invested in the U.S., the problem is substantially diminished (with respect to those funds), but not eliminated. When funds are derived from debt swaps, however, and invested locally, the problem is much greater. The issue of conflict of interest requires careful treatment at the design stage. More detailed guidance on conflict of interest, and sample clauses, are available from PPC, GC, and RLA's.

(c) Management of the funds. Arriving at a mechanism for managing the investment fund entails a fairly complex balancing of USAID's interests, the NGO's interests, and cost.

(i) One option is to establish a trust arrangement whereby control of the investment fund is totally separated from the beneficiary organization. The trustee may be a separate foundation or NGO, a bank, etc. If it seems advantageous under the circumstances, the trustee organization may be specially created in order to manage the endowment.

There are a number of advantages to using a trustee to manage the investment fund:

- A local NGO that is a beneficiary may appropriately have a board of directors composed entirely, or predominantly, of nationals of that country. With such a board, potential conflicts of interest in investing the funds could be a serious problem, particularly if the funds are local currency derived from a debt swap. It may be prudent and desirable to have international participation in the management of the fund. Separating control of the investments from control of the program activities allows for an infusion of outside influence over the investment function.
- The board of the beneficiary organization may be composed of people whose characteristics and skills are appropriate for management of the program, but who do not have the background and experience to manage the investment of the endowment fund. Again, having an independent entity manage the fund allows for the selection of those most suited to each task.
- Separation of the fund from the beneficiary may alleviate the possibility that short-term programmatic pressures could lead to imprudent investments.
- Finally, if the trustee is either of U.S. nationality or located in the U.S. and serious problems develop in the future, it will usually be easier for USAID to reach the funds. Additionally, the trustee would be regulated by U.S. laws in this case, adding a degree of protection.

The actual degree of independence of the two organizations should be closely examined. For example, is there any overlap on the board of directors? If the trustee is a bank, is it affiliated with any of the board members of the beneficiary organization?

If a trust arrangement is used, in most cases USAID will grant the funds to the beneficiary NGO, and the beneficiary will execute a trust arrangement with the trustee. However, USAID should require that it approve the trust agreement prior to the signing of the grant or the disbursement of funds. Both the trust agreement and the grant agreement should also specify that the trust agreement may not be amended without USAID approval during the period of USAID oversight. Again, the trust agreement should specify the general parameters of investments allowed and the return expected. USAID will disburse funds directly into the trust account.

If both the trustee and the beneficiary are NGO's, USAID may want to grant the funds directly to the trustee, to be held in trust for the

beneficiary. However, we would need to ensure that the appropriate HB13 provisions were passed on by the trustee to the beneficiary.

The disadvantages to using a trust arrangement are:

- If a suitable trustee does not already exist, creating a new organization could be difficult, time consuming, and expensive.
- Existing, easily accessible trustees, such as banks, may tend to be extremely conservative in their investment strategies, and not ensure the best return on the funds.
- Use of a trust arrangement could restrict the NGO's ability to build a capacity for management of long-term assets. A limited track record in this area could frustrate the NGO's efforts to use the USAID funding to leverage contributions from other sources.

(ii) An intermediate arrangement that is common among U.S. organizations is for the beneficiary organization to form a separate finance committee for management of the fund. The committee takes its general direction from the board of directors of the organization, but includes outside members with financial expertise. If such an arrangement is contemplated, it should be specified in the grant agreement. The number and qualifications of the outside members may also be specified, and USAID should ensure that a satisfactory committee has been formed prior to the disbursement of funds.

(iii) In most cases, at a minimum, a professional financial manager should be retained. In that case, the NGO retains ultimate control of the funds, but enters into a written agreement with a manager for day-to-day investment and accounting services. The contract should specify the general parameters of the types of investments to be permitted, and the amount and timing of income to be disbursed to the organization for its operations. The requirement for such a contract should be included in the grant agreement and the mission should review and approve the contract either prior to the signing of the grant, or prior to the disbursement of funds into the endowment. The grant agreement should also specify that any amendments to the financial management agreement must be approved by USAID during the period of USAID oversight.

(d) Separate account. If the NGO has funds from other sources, the funds contributed by USAID to the endowment, and the return on those funds, should be held in a separate account to facilitate monitoring. In most cases, this

should not interfere with having multi-donor contributions to an endowment fund. In fact, many organizations prefer this arrangement, since it provides some incentive to subsequent contributors to add funds that are also identifiably their own, and to which they may also want to attach conditions. However, if a mission or bureau believes that a separate account is not feasible under a particular set of circumstances, they may request an exception to this requirement from PPC.

(e) Types of investments. Although the statutory provision authorizing the retention of interest and establishment of endowments states that the funds may be placed in "interest bearing accounts", we have not interpreted this provision to restrict investments of these funds to savings accounts or similar instruments. Rather, we read this language merely as part of the positive authority Congress was providing to overcome normal prohibitions on retaining "interest" on appropriated funds. As a matter of policy, the investments should be sound and prudent and not include any of a highly speculative nature. The specific investments which will be most beneficial will vary according to the particular circumstances, and may include equity investments.

(f) Life of the endowment. It may not be necessary or desirable in all cases to create an endowment with USAID funds large enough to finance activities in perpetuity, and to permit the use of the investment income only. In some cases, it may be preferable to draw down on the principal to some degree, as well. For example, USAID may finance an organization with the understanding that it will be seeking additional funding from other sources. If the funding materializes as projected, one option may then be to preserve the endowment principal granted by USAID. An alternative approach may be to spend down the USAID funds and retain the new funding as the source of on-going income. If the additional funding does not materialize as planned, it may be preferable for the organization to begin drawing down principal in order to operate at a reasonable level of activity, rather than operate at a level that would have limited impact, even if this means that it may cease to operate altogether in a number of years.

In other cases, USAID may believe that the useful life of the organization is limited, and therefore preservation of the endowment principal is neither necessary nor desirable. Finally, budgetary constraints may limit the size of the endowment and necessitate drawdowns. A word of caution, however: if the funds are drawn down too rapidly, the endowment could appear to be nothing more than an advance of funds, and the failure to apply normal funding controls and restrictions could be called into question. The minimum period over which we would expect the USAID funds to be drawn down is 10-15 years.

(g) Financial plans. In all cases, the financial plans, including the projections for returns and the circumstances under which drawdowns of principal are to be permitted, should be reviewed by USAID prior to the approval of funding for the endowment.

(h) Tax consequences. The creation or funding of endowments may trigger a number of tax consequences -- in the U.S. (both federal and state) as well as in the host country. Of course, the beneficiary NGO has ultimate responsibility for assessing its tax liabilities. Nevertheless, tax issues should be thoroughly explored prior to the approval of an endowment, since they affect financial projections. A separate information package on U.S. tax issues has been prepared for internal guidance and is available from GC or PPC. Two of the most salient points, exempt status and deductibility of contributions, are briefly discussed below.

Income from investments in the U.S. will generally be subject to federal taxes and taxed at the corporate rate unless the NGO has been recognized as a charitable organization under Section 501(c)(3) of the U.S. Internal Revenue Code. (A separate exemption, unrelated to 501(c)(3) status, is applicable to interest income from U.S. bank accounts.) Foreign organizations can acquire exempt status by filing Form 1023. The IRS generally takes a minimum of three months to process the application. In its review, the IRS emphasizes financial management controls and accountability measures, so a thorough analysis of many of the issues identified in this guidance will help to assure 501(c)(3) status for the organization.

In general, contributions by a U.S. citizen to a foreign organization are not tax deductible, nor are contributions to a U.S. organization that is acting as a mere conduit for funds for a foreign organization. There are circumstances under which a U.S. organization can channel funds to a foreign organization without jeopardizing the deductibility of the funds, but the rules are fairly complex and need to be followed closely.

G. Legal-regulatory environment. In many developing countries, endowments are not a familiar funding arrangement. The host country laws and regulations may not be appropriate, therefore, for establishing endowments, at least in some forms. To overcome gaps in the law, the charter or by-laws of the organizations may have to include items not normally found in these documents. Local legal counsel should be consulted early in the process. Missions should recognize, however, that if endowments are not common in a country, even finding local counsel who can provide reliable advice could be problematic. The mission may need to contract outside consultants in order to gain a full understanding of the local legal and tax issues involved.

V. OBLIGATION OF FUNDS

A. Grant agreement. As stated above, obligation of funds will normally be through a grant agreement. Although there are substantial differences between our normal grant-funded activities and endowments, we are still granting the funds to the beneficiary organization, and imposing certain restrictions on the use of the funds, all of which must be incorporated into the grant agreement, either directly or by reference. Nevertheless, even though the grant agreement is the basic obligation document, it must be modified substantially in a manner similar to the modifications we make to government-to-government grant agreements for cash transfers. A model agreement will be developed in the near future.

B. Use of funds. The grant agreement should state any restrictions on the use of funds, particularly if the organization is not to be permitted to use the funds for all of the purposes for which it has been organized, or which are permitted under its charter.

C. Restrictions on funds. A normal grant agreement contains a panoply of restrictions on the use of the funds, most of which are statutorily imposed. Since endowments are created in order to provide the organization with a stable source of income, the primary purpose for which the funds are to be used is accomplished at the time the endowment is funded, although we may retain a subsidiary interest in how the funds are later used, as well. An endowment is therefore similar to a cash transfer, and normal statutory restrictions do not apply as a matter of law. However, we have determined that the following restrictions should be applied as a matter of policy:

1. Source/origin. Because USAID oversight of endowments will be somewhat limited; the organizations receiving endowments will often have other funding sources for their operations, separation of which from USAID funding could be extremely burdensome; and in most cases the income from the USAID funds will be spent rather than those funds themselves, USAID will not impose any flat source/origin requirements. However, beneficiary organizations should be encouraged to make a good faith effort to follow the general parameters of our source/origin rules, recognizing that the source of the funds is the U.S. Government. The grant agreement should contain a clause to this effect. Compliance with this good faith effort will not be monitored. Missions should be aware that source/origin is always a sensitive issue, and failure of the organization to make such a good faith effort could possibly jeopardize continuation of our endowment authority.

2. Family planning activities. None of the funds made available through an endowment, including investment income, may be used --

- (1) to coerce any person to practice abortion; or

- (2) to pay for the performance of involuntary sterilizations or to coerce or provide any financial incentive to any person to undergo sterilization.

D. Conditions precedent. The grant agreement should state that, prior to the disbursement of funds, the following must be reviewed and approved by the mission:

1. the financial plan, which includes a realistic projection of income from the endowment; and
2. the arrangements for management of the endowment fund, which should include an executed trust agreement or financial management contract if they are to be used, or formation of a finance committee.

E. Covenants. The grant agreement should include the following covenants:

1. a covenant that the trust agreement, finance committee, or financial management contract cannot be changed during the period of USAID oversight without the approval of USAID; and
2. a covenant requiring that if either the NGO or the endowment are dissolved at any time (even after the period of USAID oversight), any funds remaining in the endowment must be returned to the U.S. Treasury as miscellaneous receipts, unless USAID agrees otherwise.

F. Monitoring by USAID. The grant agreement should establish the period of USAID oversight, and the level of monitoring that will be performed during that period. In general, the endowment and use of funds should be monitored for a minimum of five years and a maximum of ten. Further details on monitoring are included below.

G. Termination. The grant agreement should include the normal rights to terminate at USAID's option if funds are improperly used, to apply during the period of USAID oversight. Additionally, the grant agreement should specify that failure to provide a scheduled audit report to USAID, or serious adverse audit findings, will constitute default under the agreement and can be considered grounds for termination. The grant agreement should also provide that if the grant is terminated, any funds remaining in the endowment must be refunded to USAID.

VI. MONITORING AND OVERSIGHT

A. Monitoring by USAID. The degree of monitoring by USAID that is desirable and feasible will be influenced to some degree by the specific circumstances surrounding the endowment. If the organization has a good track record, and we are funding the endowment as part of a decision to terminate direct USAID activities in the country, limited oversight by USAID might be all that is needed or even feasible. On the other

hand, if the organization is new and we are maintaining a presence in the country, more oversight for a longer period of time might be appropriate.

In any case, the oversight that is permitted will be limited to some degree by the nature of the transaction. In arriving at the legal determination that normal statutory restrictions need not be applied to the funding of an endowment, we are relying on the rationale that the purpose of the assistance is achieved at the time the endowment is funded. If USAID maintains too high a level of involvement in the subsequent project activities, this logic will be undermined, and it could be concluded that a normal grant agreement was the more appropriate assistance vehicle. No clear line can be drawn between what is the right level of involvement and oversight and what is too much. However, the following examples can be used as a guide:

1. The participation of a USAID employee on the board of directors of the organization or the trust (if the trustee also has some substantive oversight role in addition to having responsibility for the funds) is permissible only if it is in an ex-officio (i.e., officially representing USAID) non-voting capacity.
2. Requiring that USAID approve the first board of directors is permissible, but approving replacements after that is not. (The by-laws should build in a replacement mechanism which gives USAID confidence that the replacements will be acceptable without USAID oversight.)
3. Retaining the right to approve subgrants made by the NGO is not permissible.
4. Requiring submission of the NGO's annual report, or an annual report specifically prepared for USAID, is permissible and usually desirable.

B. Monitoring after the Period of USAID Oversight. Missions and bureaus financing endowments also need to assure themselves that adequate arrangements are in place to ensure monitoring of the endowment by others (e.g., through publication of annual reports and audits and distribution to the broad NGO community) after the period of USAID oversight ends. Appropriate provisions should be included in the grant agreement and/or trust agreement. This issue should be explicitly addressed during project design and approval.

C. Audits. An annual audit during the period of USAID oversight, following the normal A-133 audit procedures, is required in all cases. The report should cover both the status of the principal and the earnings. The grant agreement should specify that failure to provide a scheduled audit report to USAID, or serious adverse audit findings, will constitute default under the agreement and be considered grounds for termination of the agreement and refund of the funds remaining in the endowment. Additionally, the endowment should be included in the mission's audit universe, in accordance with Audit Management Resolution Program, in order to ensure that it is tracked and

monitored, even though there will not be any disbursements from USAID during most of the oversight years.

VII. MULTI-DONOR ENDOWMENTS

Endowments involving more than one donor may require some deviations from the above guidance. In such cases, specific additional guidance should be sought from PPC and GC.

VIII. CONSULTATIONS

Endowments can involve very complex structures and agreements, and may be affected by both local and U.S. laws and tax regulations. If the amounts involved are large, the potential for abuse or misuse of funds increases, particularly since many of the normal USAID controls cannot be applied. Additionally, the staff resources needed to establish an endowment may be greater than anticipated. Although USAID has gained a considerable amount of experience with local currency endowments, we do not have extensive experience creating endowments with appropriated dollars. Furthermore, dollar endowments are likely to be subject to a higher level of scrutiny by Congress and other outside organizations than that which is given to local currency endowments. It is therefore advisable for a mission or bureau that is contemplating funding an endowment to seek appropriate advice from local and U.S. legal counsel, as well as PPC and GC, as the first step in the process.

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