

Functional Series 400
Personnel

INTERIM UPDATE #2

SUBJECT: Appropriate Use and Funding of USAID's Non-Direct Hire Workforce

NEW MATERIAL: The purpose of this notice is to provide USAID managers with information and guidance on the appropriate roles and responsibilities and employment mechanisms for the various types of human resources working with the Agency.

SEE ALSO: **Series 400, Interim Update #6**, Implementation of Ceilings for the USAID Workforce, dated July 25, 1997, as it pertains to the approval authorities of the DAA/M/HR.

Policy Notice 1143, dated November 25, 1998, USDH Position Ceiling Management

ADS Chapter 601, Funding Source Policy (Supersedes Appendix A.)

Series 400, Interim Update #3, Implementation of Policy Guidance Concerning Fellows, dated September 18, 1995. (Supplements Appendix B)

EFFECTIVE DATE: September 18, 1995

POLICY

USAID/GENERAL NOTICE
AA/M
09/18/95

SUBJECT: Appropriate Use and Funding of USAID's Non-Direct Hire Workforce

USAID is charged with the design and implementation of humanitarian and economic assistance programs overseas, and to accomplish this work it obtains the services of U.S. citizens and foreign nationals under a variety of mechanisms. The purpose of this notice is to provide USAID managers with information and guidance on the appropriate roles and responsibilities of the various types of human resources working with the Agency. This directive will be supplemented with detailed guidance specific to each resource mechanism discussed herein. In addition, Appendix A constitutes a part of this notice and provides Agency funding guidance.

Guidance is developed to ensure that USAID administrative and program operations

conform with statutes, federal regulations, and the policy objectives of the executive branch. Policies, such as those contained in this Notice, are promulgated within USAID under authorities derived from the Administrator, and managers must apply this guidance in specific terms within their organizational units. Contracting Officers and the General Counsel's Office (GC) are available to assist managers in the interpretation of laws and regulations to determine the parameters of action available. However, while USAID policies may not exceed those parameters, the prudent stewardship of Agency resources may dictate the development of policies that do not exploit every possibility inherent in legislation or regulation. USAID managers shall ensure that established policies are closely adhered to in the conduct of Agency operations.

The Bureau for Management (M) is responsible for establishing an administrative framework for the accomplishment of the Agency's foreign affairs program objectives. It recruits and organizes the Agency's workforce and establishes policies for its use. The Bureau for Global Programs, Field Support and Research (G) is charged with assuring the quality of USAID's technical staff and plays a key role with M/HR in identifying, recruiting, assigning, mentoring and maintaining the professional currency of the Agency's technical staffing resources.

Background:

The Agency's core workforce has evolved over the years to reflect changing realities within the Government, as a whole, concerning how programs are designed and work is accomplished. In the '70s, the USG turned increasingly to the private sector to implement its programs. USAID began to utilize private sector entities overseas to accomplish development work under institutional grant and contract mechanisms. As personnel resources were obtained from the private sector, the USAID direct hire workforce associated with program implementation was reduced.

Congressional demands for ever-increasing levels of accountability for resources and the growth in the complex political and regulatory environment in which the Agency operated served to increase workloads. Sharp reductions in operating expense funding and personnel ceilings, or Full Time Equivalent workyears (FTEs), also reduced the number of personnel available to support program operations. These two factors forced the Agency to seek alternative mechanisms for obtaining human resources to meet its management responsibilities. USAID managers began to hire large numbers of foreign nationals and U.S. citizens under personal services contracts (PSCs) and to establish employer\employee relationships with them. Correspondingly, Washington bureaus have been utilizing greater numbers of non-direct hire resources, such as institutional contractors and grantees, and where special authority exists, personal services contractors. The ENI Bureau and BHR/OFDA both have legislative authorities to use program-funded PSCs in Washington.

In addition to PSCs and institutional contractors, other employment mechanisms were

also used. Interagency agreements were established to obtain U.S. direct hire (USDH) staff from other federal agencies. Other programs, such as the Intergovernmental Personnel Act (IPA) and fellowship and intern programs, were also established and used to obtain personnel from universities, state and local governments, private voluntary organizations, and private sector entities.

Discussion:

Overseas the mix of direct hire employees, contractors, and other non-direct hire staff varies from country to country. Many local factors -- such as the availability of commercial services, OE funds, FTE, and educated and experienced local job applicants -- contribute to the unique "personnel profile" of each USAID field unit. In Washington, as well, the bureaus do not all share the same approach in filling staff vacancies.

The core workforce includes four distinct groups. They are:

- o U.S. Foreign Service
- o U.S. Civil Service
- o U.S. Personal Service Contractors
- o Foreign National and Third Country National (TCN) Direct Hire and Personal Service Contractors

As program operations are reengineered, the manner in which the Agency determines the mix of skills it requires to accomplish programmatic goals must be clarified. The employment mechanisms that are being used and the assumptions surrounding the manner in which we utilize segments of the workforce must also be modernized to reflect changing operational requirements and realities in the new, reengineered and more accountable USAID.

Policy Guidance:

The different types of human resource categories in the Agency are discussed briefly below as a guide to managers in defining the appropriate treatment of differing staff resources.

The universe of individuals and organizations who are ultimately obtained using appropriated and non-appropriated funds, such as trust funds, is acknowledged to be larger than those types discussed in this policy. For instance, the employees of private sector entities who work under contract and grant mechanisms to implement USAID development programs -- institutional contractors and grantees -- are not considered employees of the Agency in any sense. Similarly, many USAID bureaus and missions acquire commercial support services using OE and program funds. These institutional contractors and grantees shall not be treated in any manner as employees of the Agency.

The policies and guidance contained in this directive and its appendices are effective

immediately. The following policy guidance shall be observed by all managers and supervisors. In those instances where personnel now performing work for USAID appear to be tasked inappropriately, the employment mechanism shall be modified to the appropriate type or the individual's duties and responsibilities shall be changed, as necessary.

I EMPLOYMENT MECHANISMS

1. USDH

The direct hire U.S. citizen employees (USDH) of the Agency consist of civil service and foreign service employees appointed under statutory authorities. Civil service employees constitute the Agency's predominant domestic workforce, and foreign service employees serve at posts abroad and for limited periods in the U.S.

It is USAID policy that direct hire U.S. citizen employees shall perform the basic work of the Agency, and they are responsible for and should direct and oversee the design, implementation, support, and evaluation of the USAID program. The responsibility for managing the core business areas and the basic work of the Agency lies with USDH employees.

Other categories of employees engage in Agency work under the direction and oversight of USDH. Or, in the case of institutional contractor employees or individual nonpersonal services contractors and fellows -- individuals who may not be directly supervised by USAID employees -- work is assigned under contract agreements or cooperative agreements under conditions specified by the responsible USDH contracting officer. In all cases, duties and responsibilities are assigned and authorities delegated to other types of employees and non-direct hire staff to augment and facilitate the efforts of the U.S. direct hire workforce in addressing the international foreign affairs objectives of the Agency.

When it is determined that a position must be filled by a U.S. citizen, the first option for filling the staffing requirement should be through the assignment of a direct hire employee. When a USDH employee is not available to fill the position, when the position is clearly temporary or otherwise unsuitable for the assignment of an in-service officer, or when other staffing constraints exist, USAID managers shall consider alternatives, such as obtaining the services of retired USDH employees. Consistent with the policy of utilizing direct hire employees, the services of Agency retirees should be acquired through limited direct hire appointments (reemployed annuitants).

The establishment of a contract position should only be considered when all alternatives for utilizing direct hires have been exhausted or when unique circumstances exist. A USPSC shall be acquired only when qualified in-service USDH employees or reemployed annuitants are not available to fulfill a permanent staffing requirement. Retirees are, of course, free to compete for any available PSC position, but managers shall first attempt

to meet staffing requirements through the use of direct hire appointments.

When the services of a U.S. citizen are required for a short period of time, an expert consultant position shall be established. Note that the services of retirees can be obtained through appointments as expert consultants.

This policy is focussed on position management and workforce planning within organizational units, and it requires that managers make every effort to avoid the establishment of contract positions to accomplish work within USAID offices. It does not restrict USAID retirees' ability to compete for contract positions once they have been established.

To supplement the permanent direct hire staff, temporary direct hire appointments of employees on both a part-time and full-time basis may be used to acquire specific technical expertise on a non-career, temporary basis and also to employ USDH dependents under overseas posts' family member employment programs.

2. FSNDH

The foreign service national direct hire employees (FSNDH) are non-U.S. citizen employees appointed under the authority of the Foreign Affairs Act of 1961, as amended (FAA). However, given the availability of other employment mechanisms, such as personal services contracts, it is USAID policy that direct hire foreign national positions be eliminated over time. FSNDH positions will be gradually converted to PSC positions as FSN direct hire employees separate from the Agency and the positions they have encumbered become vacant.

The PSC and direct hire FSNs serving in the overseas missions constitute a competent, often highly educated, resource base. This segment of our workforce is eager for more authority and responsibility. Dollar for dollar, they are the least expensive component of the overseas work force and a resource to which the Agency should increasingly turn in carrying out its work more economically. The current reform initiatives present opportunities for change that the Agency must seize. The role of the FSN staff will be enhanced by the reengineering systems and processes and can serve as a key element in insuring the success of the reengineering effort.

The interagency regulations on FSN direct hire employees in 3 FAM 900, 922.4(e), provide general guidance concerning the utilization of FSN staff and how they can be appropriately tasked. It is the policy of USAID to encourage FSN employees to assume as much professional responsibility as they are capable of handling and, within prudent policy constraints, to work in an atmosphere of professional equality with U.S. citizen employees. Where the abilities of individuals and the needs of the Agency dictate that additional authorities and responsibilities should be granted foreign national employees, missions should submit to the AA/M requests for specific waivers to policy restrictions.

The Rockefeller Amendment, Section 311 of the Foreign Service Act of 1980, as amended (FSA), provides that U.S. citizens must be given the opportunity to compete for direct hire FSN positions, and this requirement must be considered and satisfied when filling positions overseas. The Rockefeller Amendment applies only to FSN direct hire positions.

3. FSNPSC

The foreign national personal services contractors (FSNPSCs) employed by USAID at posts overseas constitute the largest group of employees in USAID's core workforce. In general, all the comments above concerning the work that can be undertaken by FSN employees and the importance of foreign national staff in supporting the Agency's reengineering and reinvention initiatives applies to foreign national staff employed under personal services contracts.

It is the policy of the Agency that FSNPSCs be compensated and administered in a manner consistent with that treatment afforded FSN DH employees. However, while the General Counsel (GC) has indicated that there are no statutory restrictions to further delegations of authority to FSNs, Agency policy restrictions and AIDAR acquisition regulations constrain the work assignments of FSNPSCs. Appendix J of the AIDAR contains restrictions on the use of contract employees to "obligate" the USG. As a matter of policy, USAID has limited the delegation of acquisition or payment approval authorities. Exceptions to these limitations must be approved by M/OP, in the behalf of the AA/M.

4. USPSC

U.S. citizen personal services contractors (USPSCs) are also a part of the core workforce. The USPSC is one of the primary sources of specialized assistance available to managers in designing and implementing development assistance programs and in providing administrative support. Depending upon the nature of duties and responsibilities assigned USPSCs, these employment contracts may be funded from either program or OE accounts.

Personal services contracts may be either long-term (over one year in duration) or short-term (less than one year in duration). USPSCs are subject to ceiling control levels issued by M/B to the bureaus.

The establishment of a contract position for a U.S. citizen should only be considered when the staffing requirement is clearly temporary in nature, when the duties and responsibilities of the position make the local recruitment of U.S. citizens uniquely suitable, or when all alternatives for utilizing direct hires have been exhausted. The services of an internationally-recruited USPSC shall be acquired only when qualified in-service USDH employees or reemployed annuitants are not available to fulfill the staffing requirement.

Personal services contractors are subject to certain policy restrictions, as detailed in the AIDAR and relevant contract information bulletins (CIBs).

There are two basic types of USPSC -- internationally recruited and locally recruited individuals. It is useful to consider these two types of USPSC separately.

- o Locally-recruited USPSCs

The locally-recruited USPSC is usually more cost-effective than a PSC recruited internationally, as these individuals receive limited benefits and allowances. They frequently offer skills and experience that are not available in the local labor force and that would be very expensive to import. Moreover, the services required are often short-term in nature. Administrative management, secretarial, and project management services are typical uses of the PSC when U.S. citizens are hired locally. A PSC contract with a U.S. citizen to provide these types of services often reflects a shortage of locally available English language skills or the need for a security clearance.

It is the applicant's responsibility to adhere to all host country laws and to satisfy all local income tax, alien registration, and/or visa requirements. Expatriate U.S. citizens, in conjunction with the official USG dependent family member employment programs at each post, can represent a valuable talent pool.

As resources become increasingly scarce, budgetary concerns must drive human resource decisions, and all options must be carefully considered. In that regard, locally-recruited USPSCs and FSNPSCs can be an economical option for meeting staffing requirements.

- o Internationally-recruited USPSCs

USPSCs recruited offshore often possess specialized technical expertise that is required for program or administrative operations. Most often, these individuals are recruited under long-term contracts -- more than one year. OE-funded personal services contracts are limited to two years, with options for renewal and extension, and program-funded personal services contracts are limited to five years, with the same options.

As USPSCs recruited internationally can be more expensive than USDH employees, Agency managers who propose to establish positions should review existing guidance carefully in determining the type of employee that is required to provide the services necessary. Once again, if it is determined that a U.S. citizen must be placed in a position, it is Agency policy that USPSCs should be used only if USDH staff are not available to fill staffing requirements.

For this reason, in addition to the ceiling limits established by M/B on USPSC positions,

the filling of long-term, internationally-recruited USPSC positions must also be coordinated with M/HR, which will provide specific clearances. The DAA/M/HR shall clear in advance the filling of any new or existing internationally-recruited USPSC position of more than one year in duration.

5. TCNPSC

Third-country National Personal Services Contractors (TCNPSCs) are expatriate foreign nationals who are employed by USAID in a third country (a country other than the U.S. or the individual's country of origin), and who are employed under a personal services contract. TCNPSCs may be recruited locally or recruited internationally and transferred to the post by USAID. TCNs are usually well qualified and experienced individuals who have worked extensively for USAID as FSNs in their country of origin or in other countries. TCNs are often used as an alternative to a USDH employee, when the assignment of an in-service foreign service officer is not feasible. However, in some instances, costs associated with internationally-recruited TCNPSC services have proven to be as high as those of USDH and USPSC employees, and for that reason, a careful cost analysis should be conducted prior to utilizing this mechanism.

A TCNPSC position should be established only when qualified nationals of the cooperating country are not available, and the press of Agency business does not allow sufficient time to train a citizen of the cooperating country. Program efficiencies and policy objectives also may dictate the recruitment of a TCNPSC, but in all cases the establishment of a TCNPSC position shall be temporary in nature.

Many countries in which USAID operates have laws which restrict the issuance of work visas -- and, thus, constrain the employment of non-citizens -- or which establish other restrictions on the employment of TCNs. The guidance governing the appropriate use of FSNPSC employees also applies to TCNPSC employees. TCNPSCs are subject to ceiling controls issued annually by M/B.

6. PASA and RSSA

Participating Agency Service Agreements (PASAs) and Resource Support Service Agreements (RSSAs) are agreements between USG agencies that form the basis for detailing personnel. Individuals under PASAs are detailed to the Agency to work on project-specific tasks and are generally assigned overseas. Individuals under RSSAs are identical except this work is not specific to a project and usually involves support services to the Agency. As a result, they are normally assigned to offices in Washington.

Direct hire PASA and RSSA employees count against the FTE of their parent agency and remain on their rolls. Given the FTE limitations imposed on all agencies, the agreements to detail direct hire employees will become increasingly rare. If requested by USAID, OMB will transfer FTE from USAID to the participating agency. However, as a rule, this option is not encouraged, and managers will have to provide a very strong justification to

AA/M for approval. The costs to USAID for these employees may be charged to OE accounts, although they are generally program funded. Allowances are generally provided directly to PASA employees, as in the case of post housing and dependent education allowances, and the parent agency is reimbursed the cost of salaries, benefits, and a percentage of total agreement costs -- sometimes even including USAID-funded travel and housing costs -- as overhead. The overhead costs tend to make these arrangements very expensive to the Agency.

PASAs or RSSAs may not be used as mechanisms to obtain the services of specific individuals. If the required services are not uniquely found in another federal agency, the services should be procured commercially from private sector sources.

The authorizing legislation requires that individuals furnished USAID by another agency must be excess to the participating agency's needs. The employment, by participating agencies, of contractors solely to service USAID requirements is prohibited. In the past PASAs and RSSAs have been both direct hire and contract employees of their parent agency.

USAID officials may not participate in the pre-selection of other agencies' staff for participation in RSSA or PASA arrangements. Managers are expected to ensure that the individuals proposed for assignment to USAID are fully qualified and suitable to perform the assigned duties and responsibilities as required, and they are also expected, therefore, to approve the nomination of individuals. However, a PASA or RSSA arrangement may not be used as a vehicle for acquiring the services of specific individuals.

These agreements can be an appropriate means of obtaining specific, specialized technical expertise which exists solely or principally in the public sector. 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, as detailed in paragraph 2, above.

Because of the high overhead costs associated with PASA and RSSA arrangements, direct details of other agency personnel should be used whenever possible. The next paragraph provides additional information on this mechanism. All PASA and RSSA arrangements must be cleared in advance by the DAA/M/HR.

This notice does not address interagency agreements that serve to acquire general services and do not entail the transfer of individuals. These agreements would not require DAA/M/HR clearance. They are authorized under Section 632(b) of the FAA and are entered into by AAs under a delegation from the AA/M.

7. DETAILS-IN FROM OTHER AGENCIES

USAID also obtains the services of USDH employees from other agencies under details. The agreements governing the detail of individuals to USAID may be program or OE-funded. Individuals furnished to the Agency under these arrangements can provide services and receive treatment in a manner identical to PASA and RSSA employees. In general, except as noted below, the discussion of PASA and RSSA arrangements in the previous section applies fully to details-in.

While very similar to PASA and RSSA arrangements, reimbursement to the parent agency is less costly for details-in. The parent agency is reimbursed only the cost of salary and benefits, and it is USAID policy that there not be any additional charges for overhead. In comparison, agreements for PASAs and RSSAs include salary, benefits and other administrative support costs; USAID-funded costs are included in the total, and an overhead is paid on the total amount.

The detail-in is an advantageous and cost-effective means of acquiring U.S. Government services, and this mechanism is preferred to PASA and RSSA arrangements when specialized U.S. government services are sought. Details-in must be cleared in advance by the DAA/M/HR.

8. IPA

The Intergovernmental Personnel Act (IPA) of 1970 provides for the detail to USAID of individuals from state and local governments, universities, and private voluntary organizations. Individuals under an IPA agreement may be assigned to USAID under an appointment or by detail. IPA agreements may be program or OE funded, depending on the specific nature of the position duties and responsibilities. Individuals appointed to USAID count against FTE ceilings, and those under detail do not. IPA assignments are initiated by USAID bureaus and offices, approved by the AA/M, and negotiated by M/HR.

Notwithstanding the provisions of Chapter 22 of Handbook 25, as a matter of policy IPAs are not permitted to supervise USDH personnel. IPA appointments shall only be used when established direct hire positions cannot be filled by career employees.

While individuals employed by participating organizations may be detailed to USAID, these individuals remain employees of their parent organization. Technical specialists on detail may be assigned responsibilities which are consistent with the purpose of the agreement and with reference to the restrictions cited above.

Because the Agency can use other employment vehicles for obtaining services from the private sector and private voluntary organizations (participating organizations), it is USAID policy that only services from universities and the public sector (state and local governments) be obtained under the IPA. The services of individuals from PVOs shall not be acquired through an IPA.

Individuals working under an IPA appointment or who are detailed to USAID are directly supervised by USAID officers. Individuals on IPA assignments, including JCC members,

shall not serve more than two consecutive two-year tours. After four years a break in service is required, and IPAs shall not continue to serve with USAID under another IPA assignment without working for at least one year in their parent organization. Details to USAID are based upon foreign service assignment policies and are negotiated biannually with the parent organization.

Agreement provisions governing performance evaluations and awards are established when the IPA agreement is negotiated and normally provide that annual performance evaluations will be prepared at the request of the parent organization. In general, individuals serving on detail and under appointments are eligible for cash awards. However, only individuals serving under an appointment are eligible for honor awards.

9. JCC

Joint Career Corps (JCCs) are a type of IPA and specifically are agreements with institutions of higher learning to make university employees available to USAID for assignment overseas for specific periods. By agreement with the union, JCC members may return periodically to USAID during their career. JCC members can be either OE or program-funded.

Conditions and restrictions on the appropriate use of these assignments are contained in the preceding section.

Members of the corps are expected to maintain their academic standing and credentials with the university which employs them, and they are expected to return to their employer at the end of the agreement period after having gained appropriate experience in international development and after having provided USAID with needed specialized skills and knowledge. As they are a type of IPA assignment, JCCs are initiated by USAID bureaus and offices, approved by the AA/M, and negotiated by M/HR.

10. TAACS

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.

11. OTHER CATEGORIES OF EMPLOYEES

USAID has initiated several hiring programs to augment traditional recruitment efforts.

A. The Presidential Management Intern program is one such initiative. The PMI is a civil service program run by OPM, which allows talented young professionals to work in USAID. The PMI participants are given two-year temporary appointments and are placed in a variety of offices and work situations in USAID Washington. After successful completion of the two years, PMIs become permanent employees of USAID.

B. Another program which, inter alia, is intended to promote diversity within the Agency is the Intern Investment Program. This is a new structured summer program that allows the Agency to identify candidates for the foreign service International Development Intern program. Both of these programs utilize civil service appointment authorities, and the participants are employees of the Agency and count against Agency FTE. There is, therefore, no restriction in the manner in which these individuals can be tasked.

C. The Agency has participated in the Cooperative Education Program (Co-op) for several years. This is a work/study program in which participants attend school or college and work part-time in USAID. After graduating and successfully fulfilling work requirements, participants may be given permanent civil service appointments. Co-op participants are employees of USAID and count against Agency FTE.

D. Many USAID missions have engaged the services of "interns" from various universities for specific timeframes. These interns normally work within USAID missions, under the direction of USAID employees, receive a stipend, and are employed under a personal services contract. The interns bring perspectives and knowledge to the Agency which is, in many instances, state-of-the-art and diverse.

II NONPERSONAL SERVICES RESOURCES

A. INSTITUTIONAL SERVICES

Support contracts exist in many bureaus and are designed to provide essential support for program activities. These are institutional contracts that provide USAID offices with contractor personnel who "advise and assist" in preparing, for example, project papers and internal reports and who arrange conferences and also can provide secretarial and other administrative support for program-funded personnel. These contracts are normally program funded. Also, through the use of cooperative agreements, USAID obtains the services of institutions to seek out eligible candidates for fellowship programs and identify appropriate placements for them. Individuals performing work under these arrangements are not employees of the Agency. They remain employed by their parent organizations, and they may not be tasked by Agency managers like USAID employees.

In separating the program and operating expense (OE) appropriations, it was the intent of Congress that USAID strictly segregate the costs of development programs and the costs of running those programs. As the Agency's OE budget is provided to fund the cost of doing business, care must be taken to ensure that routine Agency business is not funded from accounts appropriated for development programs. Administrative support to all Agency operating units should be provided by employees. Where it is necessary and prudent to acquire nonpersonal services, the following restrictions must be observed. Appendix A provides additional guidance in this regard.

- o Clearance by the DAA/M/HR shall be obtained for the acquisition of nonpersonal services that will be supplied "on-site" within USAID offices;
- o nonpersonal services contract staff may have access to proprietary or confidential personnel information or any other fiduciary or procurement-related information only in accordance with Procurement Integrity, Organizational Conflict of Interest rules and other privacy act and other applicable rules;
- o nonpersonal services contract staff may not be directly supervised by direct hire employees;
- o physical separation of workspace between employees and contractor staff should be established, to the extent feasible; and
- o the contract will not provide for the performance of any inherently governmental functions.

B. FELLOWSHIP PROGRAMS

Fellowship programs are intended to provide individuals with practical work experience in the area of economic and humanitarian assistance for the purpose of fostering a pool of experts devoted to international development assistance. USAID benefits from these

programs through the research, technical advice, and intellectual stimulus provided by the fellows. In addition, Agency employees are exposed to highly specialized skills and knowledge represented by the fellows.

Consistent with its responsibility for the stewardship of USAID's technical resources, the Global Bureau is assigned responsibility for the management of all Agency fellowship programs. Global will remain cognizant of fellowship programs with the potential both to benefit USAID and to foster the development of individual fellows, and it will manage the programs that are approved for implementation, to include the distribution and placement of individual fellows in Washington offices and in overseas posts.

Recipients of USAID assistance for fellowship programs shall be established institutions which have goals and purposes associated with support of fellowship programs and which are independent of USAID goals and purposes. Institutions shall not establish fellowship programs or seek out individuals in response to stated requests for specific skills or experience.

Fellows are provided under institutional contracts, grants or cooperative agreements with institutions and as such, are not "employees" of the Agency. These institutions are responsible for maintaining the fellowship programs, identifying appropriate individuals, and finding placements for them. USAID managers shall define the specific purposes of fellowship programs to justify their approval. All programs shall have purposes which are specific to the fellow, to USAID, and to the parent organization. These purposes must be defined and identified to justify the placement of all fellows.

As the existing fellowship programs are considered for renewal or extensions, they will be reviewed against the criteria in this directive and its appendices. The introduction of new fellowship programs beyond those identified specifically in this directive must have the approval of the AA/M. The placement of fellows within USAID organizational units must be cleared in advance with the DAA/M/HR. A ceiling for the maximum number of fellows that may be placed within USAID at any given time will be issued by M/B to the Global Bureau.

The following criteria on the use of fellows and the conditions that govern their suitability for placement constitute USAID policy.

a) Fellows:

- o shall not directly supervise USAID employees;
- o shall receive technical guidance, counsel and operational and procedural oversight from USAID employees but shall not be directly supervised by, nor enjoy an employer/employee relationship with, USAID employees (Agency employees may not exercise fundamental supervisory responsibilities such as directing and

assigning work, approving leave, rewarding superior performance, or disciplining fellows);

- o shall not officially represent the USG;
- o shall not be used to accomplish the inherently governmental work of the Agency;
- o shall not have access to proprietary or confidential personnel information or any other fiduciary or procurement-related information that would be protected under Procurement Integrity or Organizational Conflict of Interest rules;
- o shall not encumber direct hire positions; and
- o shall not exceed two years work within the program.

b) Senior and mid-career fellows (individuals who are not undertaking advanced studies, but who normally are employees or staff within their parent organization) are subject to the above guidance, and in addition:

- o shall be regular employees of the sponsoring organization and not hired as contract or temporary staff for the purpose of supplying USAID with personnel; to meet this criteria they must have been employed by their parent institution for at least two (2) years prior to receiving a fellowship;
- o shall not be utilized to mentor other fellows; and
- o shall not be utilized to supervise other fellows.

There are several different types of fellowship programs. The programs listed below should be considered examples. USAID managers shall ensure that fellows are tasked and treated according to the policies set forth herein and the general guidance provided via the GC memorandum on fellows and

fellowships, dated July 17, 1995. The memorandum is attached to this directive and designated Appendix B.

- o AAAS

The American Association for the Advancement of Science (AAAS) places post-doctoral scientists and engineers in fellowship programs in a number of institutions, including USAID. The placement of fellows in institutions is intended to provide them with practical, operational field experience. The fellowship program is one of the Association's primary roles. AAAS operates fellowship programs in Washington and overseas under grants and cooperative agreements with USAID.

- o POPF

The Population Fellows program is based upon a cooperative agreement between USAID and the University of Michigan. Fellows are required to be employees of the University, and they are placed in missions and in Washington offices to obtain operational experience. Each fellow is assigned a mentor to provide information, guidance and support within the working environment.

- o STARS

The Johns Hopkins' Senior Technical Advisors in Residence (STARS) program is designed as a vehicle for mid and senior level professionals. STARS fellows are employees of Johns Hopkins who provide USAID with specialized technical experience, with advanced research skills and with mentoring services, depending upon the need for their technical and leadership expertise.

- o OTHER FELLOWS

The Urban Development Fellows program is managed directly by the Global Bureau. All of the fourteen participating fellows (as of 07/14/95) are working within that Bureau.

The Child Survival Fellows Program (CSFP) is a fellowship program that is very similar to the POPF program discussed above.

Similarly, the Western Consortium Population Leaders Fellows Program has much in common with STARS. It is a vehicle for providing experienced people in specific disciplines with opportunities for training in leadership and related areas to further strengthen their contributions to the field of population.

New fellowship programs include the Democracy Fellows Program, which is designed to strengthen USAID democracy programs, and a WID fellowship program, which is focussed on building a cadre of experts sensitive to the social, economic and cultural issues that impact on empowering women in developing countries.

As all fellowship programs must be approved by the AA/M, any proposed fellowship programs which are not discussed above or approved prior to the issuance of this Notice, must be submitted to the AA/M for approval.

Policy Implementation

The DAA/M/HR is responsible for reviewing and clearing plans to acquire human resources by any means, and managers must seek such approval in advance of making

any commitment. M/OP, in the behalf of the AA/M and in conjunction with responsible contracting officers, is responsible for applying these policies to acquisition instruments.

Clearance for the renewal or implementation of appointments, contracts, cooperative agreements and other arrangements that are used to acquire services must be sought from M/HR or M/OP, and human resources planning by all USAID operating units is expected to be in conformance with this guidance.

M/B will issue fiscal year workforce ceilings for each FTE-controlled category to all USAID bureaus. Requests for exception to workforce ceilings must be submitted to M/B; any appeals to M/B decisions on workforce ceilings will be forwarded to the AA/M for final disposition.

Funding Utilization and Consultation:

Managers are expected to ensure that the mechanisms employed to obtain human resources are appropriate and consistent with Agency guidance, specifically including guidance on the appropriate type of funding for the many different categories of individuals involved in USAID program operations (see Appendix A).

The manner in which such staffing arrangements are funded also must be an integral part of determining how to fill positions. Managers are responsible for the economical use of funds, and appropriations law requires that funds for operating expenses (OE) and development assistance programs be used solely for the purposes for which they are made available. Guidelines for funding are contained in Part IV of a USAID/Washington Notice dated 06/29/92, Policies and Guidelines for Nonpersonal Service Contracts in AID/W. This guidance was repeated in a memorandum from the Acting Administrator to the Executive Staff on 03/23/93. Questions which specifically involve funding sources should be addressed to Marcus Rarick, M/B/SB, Room 3741 NS, telephone (202) 647-0935.

POINT OF CONTACT: Managers requiring further guidance regarding this notice should contact Lawrence Brown, M/HR/PPIM/PP, (202) 712-1074.

Appendix A

USAID POLICY ON FUNDING SOURCES

SEPTEMBER 18, 1995

This Appendix has been superseded by ADS Chapter 601, Funding Source Policy.

Appendix B

July 17, 1995

MEMORANDUM

TO: DAA/G, Ann Van Dusen

FROM: GC/G, Michael Kitay

SUBJECT: Fellows and Fellowships

Problem: You have asked for legal guidance on the design and management of new fellowship programs¹ by the Global Bureau. This memorandum focuses primarily on the elements of a model or "ideal" fellowship program. This memorandum does not discuss the employment status of either personal service contractors (PSCs) or TAACS personnel, both of which are personnel categories based on statutory exceptions to the federal Civil Service laws.² TAACS personnel (i.e., Technical Advisors in Family Planning, AIDS and Child Survival) also serve under special legislative authority, now in Section 522 of the FY 1995 foreign operations appropriations act. They are regarded as USG employees for most purposes. Currently, there are about 45 TAACS serving in various fashions in USAID/W and the field. A General Agency Notice on TAACS was issued on April 12, 1995, and a revised General Notice on May 12, 1995.

Discussion: The design and management of fellowship programs supported by USAID must be consistent with the Foreign Assistance Act of 1961, as amended (FAA), as well as certain employment and ethics laws. For purposes of this memorandum, we have summarized the requirements of the applicable provisions of these and other relevant

¹ The terms "fellow" and "fellowship" do not have a precise, technical, term-of-art usage in U.S. Government (USG) parlance, except in the income tax field. (The federal income tax regulations treat the stipend of a fellow differently than the wage of an employee: Both are taxed as income, but there are no social security taxes on fellowship stipends.) There is, otherwise, no overall USG articulation of the terms, as evidenced by consulting the U.S. Code Annotated, the Supreme Court annotations, the General Accounting Office index, and the head of the Office of the General Counsel, Grants and Fellowship Programs, of the Smithsonian Institution.

² Federal law generally requires the USG to obtain employees by direct hire under competitive appointment or other procedures pursuant to the Civil Service laws. 5 U.S.C. § 3301 et. seq. In the absence of a specific statutory exception to the general rule, a USG contract for the personal services of an individual would be prohibited. PSCs employed by USAID overseas and in the ENI Bureau serve under the authority of specific statutory exceptions set forth in sections 636(a)(3) and 498B(j)(1) of the Foreign Assistance Act of 1961, as amended (FAA).

laws into four categories, as follows: (1) serving the goals of the FAA; (2) promoting the purposes of the grantee institution (the normal test for grants); (3) promoting the career development of individual Fellows (the normal goal of fellowship candidates); and (4) not violating or conflicting with other general laws and policies applicable to USAID.

I. Serving the Goals of the FAA

The authority for USAID to support fellowship programs lies in the broad grant-making authority of Section 635(b) of the FAA.³ That section provides that the President (delegated to USAID):

may make ... grants to, make and perform agreements and contracts with, or enter into other transactions with, any individual, corporation or other body of persons ... in furtherance of the purposes of the [FAA] and within the limitations of [the FAA].

Because they are being supported with USAID assistance funds, these fellowship programs must meet the legal standard underlying any assistance relationship between USAID and an assistance recipient. Generally speaking, that standard requires that the USAID-supported programs of the assistance recipient will promote the purposes of the FAA.

In more specific terms, the assistance recipient's program must promote the purposes of the particular section of the FAA that authorizes the President to expend the appropriated funds in question. For example, if Development Assistance (DA) funds will be used to provide assistance to an organization that seeks support for a fellowship program for experts in Child Survival, that organization's program must promote the purposes of the relevant provisions of Section 104 of the FAA.

A common and appropriate purpose of fellowship programs is to create, train, and motivate a talent pool of experts who are able and willing to devote their careers to advancing LDC development goals in the specific sectors and subsectors that are mentioned in the FAA. Program documentation used to justify the expenditure of grant funds for a fellowship program would discuss the relative need for the talent pool sought to be created and the expected outcome or results of the intended fellowship program. A review of this documentation, when it was completed, would form the basis for an opinion as to whether the goals and purposes of the FAA are met by a specific fellowship activity.

³ Unlike personal service contractors or TAACS personnel, which are both authorized by statute, the fellowship programs supported by USAID are programmatic creations based on the statutory authority for the grants or CAs involved.

II. Promoting the Purposes of the Grantee Institution

While Section 635(b) of the FAA provides the broad grant-making authority for USAID to use assistance instruments where their use will enhance the purposes of the FAA, USAID policy guidance further instructs that assistance instruments may be used:

- (a) To support or intensify the activities of independent organizations which contribute to the achievement of FAA objectives; or
- (b) To develop the independent capacity, integrity, and quality of the recipient as an entity whose function is for the economic or social betterment of underdeveloped countries. (USAID HB 13, Ch. 1B, para. 2.a.(3)).

Recipients of USAID assistance for fellowship programs should be bona fide institutions having goals and purposes associated in support of fellowship programs that are independent of USAID goals and purposes. Stated differently, the grantee should not merely be a vehicle or instrument to accomplish USAID goals, most explicitly, its personnel needs. In an ideal setting, the grantee will have existing institutional goals or programs designed to bring a new talent pool of experts into their field of expertise. In these situations, USAID would be one of a number of placement opportunities for new expert personnel.

The existing AAAS Science, Engineering and Diplomacy Fellows Program illustrates this requirement of grantee institutional independence and independent purpose. The AAAS Fellows Program was modelled after its own Congressional Fellows program, which the AAAS initiated in 1973. The Diplomacy Fellows Program was initiated in the State department in 1980 and extended to USAID in 1982, with an initial class of one Fellow placed at USAID that year. Since that time, the USAID-sponsored portion of the Program has grown to approximately 40 Fellows per year.

The AAAS mandate is to promote science policy, and its Diplomacy Fellows Program is designed to provide an educational opportunity for scientists of all disciplines. The Program is supply driven, in that Fellows are selected by peer review and put forward to USAID by the AAAS. The AAAS panel's decision to deny a fellowship to an applicant may not be reversed, even if USAID wished to offer a fellowship to that person. Only the AAAS can make a formal offer of the fellowship. USAID does not provide applicants to the AAAS nor make an annual request to the AAAS for a certain number of Fellows, although it does indicate to the AAAS which particular program areas might benefit the most from Fellows. However, the AAAS does not seek to fill all USAID vacancies. The AAAS maintains the right to withdraw the fellowship during the year, and has refused to offer an extension to a Fellow that it feels is not a credit to the program.

III. Serving the Purposes of the Fellows

Not only should a fellowship program supported by USAID promote the purposes of the FAA as well as the grantee's own institutional development purposes, individual Fellows also should have defined goals and purposes that are independent of USAID's goals and purposes -- or the goals of other institutions to which the Fellows are assigned -- and that are not provided by USAID, as would be the case with direct hire employees.⁴

Again, the AAAS model is informative: Fellows are recruited and selected by the AAAS independently of USAID or the other institutions where fellows are placed. After the Fellows have been selected, USAID collaborates with the AAAS on their placement within the Agency. Fellows develop work assignments for the year in consultation with USAID offices and bureaus where their expertise is needed and useful and where their career development will benefit. Frequently, successful fellowship experience has also included a major, relatively independent, professional assignment which draws on the Fellow's scholarly expertise, which can be completed within the period of the fellowship, and which culminates in a report authored by the Fellow.

In addition to providing overall administrative support to the Fellows, the AAAS offers a variety of activities to enhance the professional development of the Fellows during their fellowship. For example, at the commencement of each two-year fellowship (i.e., every Fall), the AAAS runs a three-week orientation in Washington, D.C., during which new Fellows meet with a variety of national leaders, not just USAID personnel. The AAAS also runs a year-long seminar program on issues involving science, technology and public policy, and includes in each fellowship up to \$2,250 for training (e.g., language, professional society meetings, short courses) to assist in professional development. In addition, Fellows are expected to participate in meetings, conferences, and workshops in their area of specialization.

The "purposes" of the Fellows referred to in this discussion must be consistent with the legitimate purposes of the grantee institutions. Securing employment with USAID is not a legitimate goal for either individual Fellows or the grantee institutions. Normally, we would expect that fellowships would automatically end within a pre-established time period lasting not more than two to three years.

⁴ This is not to say that the Fellow's goals and purposes may not ultimately coincide with USAID's goals and purposes; rather, we use the word "independent" to indicate that the individual Fellow's goals and purposes should be developed by the Fellow before he/she is assigned to USAID or another institution.

IV. Not Conflicting With General Laws and Policies Applicable to USAID

A. Employer-employee Relationship

Individuals may enter into a variety of status relationships vis-a-vis the U.S. Government (USG). These include:

- an employee (where the USG retains the right to supervise and control the method and manner of performance);
- an independent contractor, or employee of a contractor (where the USG has the right to reject the finished product or result, but not to supervise how the product is produced or the result is accomplished); or
- a grantee or employee of a grantee or Cooperative Agreement (CA) recipient (where the result will coincide both with what the government wants and with what is in the institutional purpose of the grantee to produce). For this purpose, a CA is the same as a grant.

The basic rule of employment of individuals by the USG is set forth in the federal Civil Service laws. 5 U.S.C. § 3301 et. seq. That rule generally provides that the USG is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by civil service laws.

USAID is not permitted to circumvent this requirement in the guise of fellowship programs. Fellowship programs may not be designed for the purpose of evading such laws or for the purpose of avoiding the effect of FTE ceilings.

Assuming it is clear that a new fellowship program meets all of the requirements discussed above in sections I-III, and that individual Fellows are not being used to purposefully avoid FTE ceiling limitations, the question arises whether Fellows may be "supervised" by direct hire employees. [In this context, we define the term "supervision" as day-to-day technical guidance and operational oversight.] We believe under these circumstances that Fellows may be "supervised" by USAID direct hires, and that such supervision would not create an illegal employer/employee relationship between USAID and the Fellow. Indeed, if supervision was prohibited under these circumstances, it might be impossible for the purposes of the grant or CA to be fulfilled.⁵

⁵ We are aware that recent policy guidance issued by AAM on Fellows at USAID (Memorandum from Larry Byrne dated April 4, 1995) states that Fellows may not be supervised by U.S. Direct Hires. However, we believe that as a legal matter, Fellows may be supervised by U.S. Direct Hires if the fellowship program survives the strict scrutiny described in this memorandum. This memorandum does not address the other topics mentioned in the policy guidance on Fellows, such as issues related to organizational conflicts of interest, confidentiality of information, access to workspace, security, ethics, post-employment restrictions and possible tax consequences associated with overseas missions.

B. Other Restrictions

An entirely different issue is what Fellows may or may not do while they are placed at USAID. The actual daily activities of Fellows will vary depending on where they are placed. In general, however, Fellows may have both technical and administrative responsibilities (as opposed to managerial responsibilities), and may serve as resources and advisors in their respective areas of expertise. They may also act as liaisons with other federal agencies and/or NGOs or PVOs; provide advice on contract activities; serve on technical committees, research review committees, and evaluation teams; draft technical papers and reports; draft study protocols pertinent to project activities; and provide advice on the design, evaluation, and monitoring of selected country projects or activities in a manner consistent with USAID program needs and the Fellow's career development objectives.⁶

It is most important to remember that because Fellows are not USG employees, they may not perform "inherently governmental functions." "Inherently governmental functions" include those activities which require either the exercise of discretion in applying USG authority or the use of value judgments in making decisions for the USG. All Fellows should be advised specifically in writing that they may not perform "inherently governmental functions," including those on the following illustrative list:⁷

- officially represent USAID;⁸
- approve policy documents;
- supervise USAID employees;
- negotiate, review, or sign contracts on behalf of USAID;
- certify vouchers;
- select or recruit USAID employees;
- give final approval to USAID funding or budget documents;⁹

If not already provided for under existing fellowship programs, each program should

⁶ This activity would not be permissible for a Fellow when, for example, the project design will lead inevitably and predictably to a Request for Proposals to which the Fellow's sponsoring organization might be interested in responding. Applicable Ethics and Conflict of Interest statutes and regulations would preclude the Fellow's participation in such an activity.

⁷ All fellowship programs currently in place in the Global Bureau provide such explicit written guidance to their Fellows. For further guidance on "inherently governmental functions," see AID/W Notice dated June 29, 1992 on "Policies and Guidelines on the Use of Nonpersonal Service Contracts in AID/W." GC/G also should be consulted when questions arise as to whether a Fellow may perform a particular activity.

⁸ While a Fellow may not represent the USG at a conference, the Fellow is free to attend such conference as an observer or advisor, and may participate in the conference so long as he/she identifies him/herself as a USAID Fellow and not an official representative of the USG.

⁹ In October 1994, Michael D. Sherwin, the USAID Procurement Executive, provided further guidance to Global Bureau Fellows on this particular issue. Mr. Sherwin reminded the Fellows that they may not have access to: (1) sensitive internal budget information; (2) information on budget figures which may be protected under Procurement Integrity rules from disclosure to a potential "competing contractor"; and (3) information which should be protected under rules against Organizational Conflicts of Interest.

require its Fellows to receive a full orientation briefing from representatives of GC/EA, M/HR, and G as to these and any other restrictions on or regulations of conduct that apply to Fellows. Further, every USAID office in which Fellows are placed should be briefed on the distinguishing characteristics of Fellows from U.S. direct hires. Each such office should also ensure that Fellows are identified as such to all office personnel on an ongoing basis (e.g., any information on staffing patterns -- such as an office telephone list -- would identify Fellows as such), and that written guidelines regarding the treatment and conduct of Fellows periodically are distributed to all office personnel.

By using the AAAS Diplomacy Fellows Program as an example of an "ideal" fellowship program, we do not mean to suggest that any variation from the salient characteristics of the AAAS Program would prove fatal. Rather, each fellowship program must be evaluated on a case-by-case basis to determine whether it meets the legal standard for an assistance relationship in the context of a fellowship program. Until they have been evaluated under this standard, other fellowship programs at USAID that do not match all the characteristics of the AAAS Diplomacy Fellows Program should probably avoid direct hire supervision of Fellows. In particular, USAID involvement in the selection of Fellows could be problematic, as the more involved USAID is in the selection of Fellows and their placement in USAID, the more demand-driven the program might look, and the more the program might appear to be an illegal method of securing USG employees.

drcd7 (revised ads12, ads15)