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## ADS Chapter 206

# Prohibition of Assistance to Drug Traffickers

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Functional Series 200 – Program Assistance  
 ADS 206 – Prohibition of Assistance to Drug Traffickers

*\*This chapter has been revised in its entirety.*

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## **Functional Series 200 – Programming ADS 206 – Prohibition of Assistance to Drug Traffickers**

### **206.1 OVERVIEW**

Effective Date: 05/01/1999

This chapter provides USAID-specific policies and procedures to implement section 487 of the [Foreign Assistance Act \(FAA\)](#) and the 487 Regulations of [22 CFR 140](#).

### **206.2 PRIMARY RESPONSIBILITIES**

Effective Date: 05/01/1999

- a. The **Bureau for Program and Policy Coordination (PPC)** is responsible for notifying Missions and other operating units of the list of "covered" countries.
- b. **Operating units** are responsible for identifying key individuals, obtaining certifications, and complying with the advance review process.
- c. **Contracting and agreement officers** are responsible for inserting the appropriate implementing clauses in contracts, grants, and other agreements.
- d. For Mission-financed agreements, **the Mission** is responsible for identifying key individuals. For non-Mission financed agreements, the cognizant technical office is responsible for identifying key individuals, in consultation with the Mission as appropriate.

### **206.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

Effective Date: 05/01/1999

The statements in .3 section of this ADS chapter are the official Agency policies and corresponding procedures.

#### **206.3.1 Prohibition on Assistance to Drug Traffickers**

Effective Date: 05/01/1999

Missions and other USAID operating units must comply with the provisions of the 487 Regulations and the provisions of this ADS chapter in administering their assistance portfolios.

#### **206.3.2 Overview of 487 Regulations**

Effective Date: 03/01/2000

Section 487 of the Foreign Assistance Act requires that reasonable steps be taken to ensure that assistance is not provided to or through drug traffickers or persons with narcotics convictions. In July of 1998, the Department of State issued final 487 Regulations and a cable (State 135276, 7/24/98) on new procedures for implementing this statute.

**a. Basic Procedures**

The 487 Regulations establish three basic procedural requirements as follows:

- (1) Advance Post Review - overseas Posts must REVIEW certain "key individuals" of recipient entities and covered participants before assistance is provided;
- (2) Certifications - "key individuals" of certain entities and covered participants must CERTIFY that they are not and have not been involved in drug trafficking before assistance is provided; and
- (3) Clauses - USAID must include implementing clauses in certain USAID-financed agreements and contracts.

These three basic procedures apply differently to various types of organizations and assistance.

**b. "Covered" Countries**

The requirements for review, certifications, and implementing clauses apply as a routine matter to assistance in COVERED Countries, as described in ADS **206.3.3**.

**c. Application to "Other" Countries**

In "OTHER" countries, the procedures apply only if there is reasonable suspicion. There is no requirement to establish procedures to gather information or otherwise determine the presence or absence of reasonable suspicion. If the Mission or other USAID operating unit comes into possession of information concerning reasonable suspicion it must forward it to the Country Narcotics Coordinator.

**d. "Covered" Assistance**

Similarly, requirements for review, certifications, and implementing clauses apply as a routine matter only to COVERED assistance, as described in section **206.3.4**. The requirements apply to non-covered assistance only when there is reasonable suspicion.

**e. Other Assistance**

Missions have the authority to apply any or all of these procedures to non-covered activities. For example, a Mission may complete a post review of key individuals of grantees receiving host-country owned local currencies.

**f. “Providing” Assistance**

The advance review and certification procedures are required before “providing” assistance. Providing assistance takes place at the point of disbursement, not the point of obligation. Therefore, posts and offices can comply prior to obligation or after obligation prior to disbursement to the covered organization or individual. If compliance takes place after obligation, posts and offices must consider whether conditions precedent are needed in the case of key individuals (the participant training procedures already condition USAID approval on compliance with these procedures). For example, when a non-governmental organization (NGO) has a requirement for a certification from certain key personnel, the grant may be obligated with a condition that disbursement is subject to receipt of the certification.

**g. Effective Date**

The 487 Regulations are effective October 5, 1998. Transition guidance on application of the regulations to existing agreements is provided in ADS **206.3.5**.

**206.3.3 Covered Countries**

Effective Date: 01/30/2003

The 487 Regulations apply when assistance is being provided to or through an individual or entity in a covered country.

**WHAT ARE THE COVERED COUNTRIES?**

The covered countries are those identified annually by the President as major, illicit, drug-producing or drug-transit countries under section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228) (FRAA), which was enacted on September 30, 2002, as well as any country or portion of a country that the State Department determines is to be treated as a covered country under the 487 Regulations.

On January 30, 2003, the President identified the following countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam.

**206.3.4 Covered Assistance**

Effective Date: 05/01/1999

COVERED ASSISTANCE is a contract, grant, cooperative agreement, guarantee, or other agreement in a covered country that meets the criteria relating to amount, funding source, and recipient.

**206.3.5 Amount – \$100,000 Threshold**

Effective Date: 05/01/1999

The 487 Regulations apply to USAID obligations of more than \$100,000. The \$100,000 threshold applies to each agreement but only to that part of the agreement, which is covered assistance. For example, a \$2 million grant with only \$80,000 of funding for activities in a covered country does not meet the \$100,000 threshold.

The threshold applies to the first \$100,000 of covered assistance in a particular contract, grant, or other agreement. It only applies to post-threshold amendments if there is a reasonable suspicion. For example, a grant with an NGO originally for \$2 million of covered assistance is amended to provide another \$1 million in covered assistance. Since the threshold was met by the initial grant, the procedures for post review and certifications of key individuals do not apply to subsequent amendments unless there is reasonable suspicion. But, the procedures for covered participants apply because there is no monetary threshold for covered participants.

**206.3.6 Funding Source**

Effective Date: 05/01/1999

**a. FAA/AECA Funding.** Only assistance funded under the FAA or the Arms Export Control Act (AECA) is covered. An agreement funded from other sources is not covered, e.g., SEED Act, P.L. 480, host country-owned local currencies, or USAID trust funds.

**b. FAA Exceptions.** The following are not "covered assistance":

- (1) Assistance to small farmers when part of a community-based alternative development program;
- (2) Disaster assistance under the "notwithstanding" authority of section 491 of the FAA;
- (3) FAA assistance under other "notwithstanding" authorities when invoked under Bureau or Mission procedures governing use of notwithstanding authorities; and
- (4) Non-assistance FAA funds, e.g., Operating expense funds or section 607 reimbursable agreements.
- (5) Non-monetary assistance provided through the transfer of property after termination of an agreement providing covered assistance.

## 206.3.7 Recipients

Effective Date: 02/28/2001

The procedures apply differently to certain categories of recipients.

- a. A First-Tier Recipient** is a direct party to a USAID bilateral agreement, direct grant, cooperative agreement, contract, inter-agency agreement, loan, guarantee, or other agreement.

EXAMPLE: USAID obligates funds in a Strategic Objective Agreement (SOAG). Under the SOAG, USAID enters into a grant with Company A and the host government enters into a host country contract with Company B. The host government is a first-tier entity and so is Company A because it too is a party to an agreement with USAID. But, Company B is not because it is not a party to an agreement with USAID. Its agreement is with the host government.

- b. Designated Subrecipients**, i.e., subgrantees, subcontractors and other subrecipients, below the first tier. The 487 procedures do not apply to most subrecipients. Other than covered participants and Intermediate Credit Institution (ICI) borrowers, which are special categories of subrecipients, the 487 procedures apply only to those subrecipients specifically designated by USAID to receive or provide more than \$100,000 in covered assistance.

Designation means that the subrecipient has been unilaterally selected by USAID as the subrecipient. USAID approval of a subrecipient, selected by another party, or joint selection by USAID and another party is not designation. The procedures apply differently to different categories of designated subrecipients as described in paragraphs c and d below.

For ICI borrowers see paragraph c5 below and for covered participants see paragraph d below.

- c. Major Categories of First-Tier Recipients and Designated Subrecipients** and which of the specific 487 procedures apply to each category follow:

(1) **Foreign Government Entities:** A Post must review key individuals before an agreement providing covered assistance is signed and implementing clauses must be included in the assistance agreement. Certifications from key individuals of foreign government entities are not required.

(2) **Public International Organizations (PIOs).** For agreements with PIOs involving activities in covered countries, a special implementing clause must be included in the agreement. Advance review and



certifications are not required for key individuals of PIOs.

(3) U.S. and Non-U.S. NGOs (including non-profit and for-profit entities): Post must review individuals of non-U.S. NGOs (but not U.S. NGOs) before an agreement to provide assistance is signed. In addition, key individuals of both U.S. and non-U.S. NGOs must certify that they are not and have not been engaged in drug trafficking. Lastly, implementing clauses must be included in agreements with both U.S. and non-U.S. NGOs.

(4) Individuals, e.g., non-personal service contractors. Post must review individuals before an agreement to provide assistance is signed. The individual must certify that he or she is not and has not been involved in drug trafficking. In addition, implementing clauses must be included in agreements involving covered assistance to an individual. Personal Services Contractors (PSCs) are not included in this category; they are in the category U.S. Federal, State, or Local Government Entities in paragraph 7 below.

(5) Intermediate Credit Institutions (“ICIs”) are a special category of first tier recipients. 487 procedures, including review of key individuals, certifications and clauses, apply to ICIs in accordance with paragraphs 1 or 3 above, depending on whether they are a foreign government entity or an NGO. An entity receiving USAID funds for the purpose of lending to third parties is an ICI. An entity receiving USAID loan guarantee assistance is not an ICI. In addition, ICIs are required to include implementing clauses in loan agreements with borrowers for amounts exceeding \$1,000.

(6) Guarantees. A recipient with whom USAID signs a loan guarantee agreement which provides a USAID subsidy of \$100,000 or more to cover the risk of loss from the guarantee is a first tier recipient. The 487 procedures, including review of key individuals, certifications, and termination clauses, apply to that party. It is not the amount of the loans being guaranteed but the amount of the subsidy that is counted for purposes of the \$100,000 threshold. For example, a guarantee on loans \$2 million with a subsidy amount obligated to cover the risk of loss is \$80,000 does not meet the \$100,000 threshold. The 487 procedures do not apply to subrecipients of the loan guarantee, such as borrowers of the loans being guaranteed by USAID, unless USAID designates the subrecipients.

(7) U.S. Federal, State, or Local Government Entities. Review of key individuals and certifications of governmental entities, including PSCs, is not required. But the 487 procedures for covered participants and subrecipients apply to covered assistance furnished under interagency

agreements, and unless otherwise agreed to buy USAID, the recipient agency, not USAID, is responsible for compliance with the 487 procedures.

- d. Covered Participants:** All three 487 procedural requirements - advance review, certifications, and implementing clauses - apply to "covered participants," receiving assistance at any tier and regardless of the cost of training. In other words, the procedures apply whether USAID is funding and administering training directly or through host government or NGO implementing entities.

### **206.3.8 Transition Provisions**

Effective Date: 05/01/1999

The 487 Regulations, effective October 5, 1998, are applicable to on-going assistance activities as follows:

- a.** For covered participants, the operative event is the date of USAID approval. If USAID approves a Covered Participant after October 5, 1998, the procedures (advance review, certification, and implementing clauses) apply to that Participant regardless of the fiscal year of funding or the date of the agreement under which the funding is made available.
- b.** For agreements already in place on October 5, 1998, implementing units are required to apply the 487 Regulations the first time new funds are added to the agreement, including any previously anticipated incremental funding. This requires negotiating and including implementing clauses as well as advance review and certifications.

### **206.3.9 Post Advance Review Procedures**

Effective Date: 05/01/1999

- a.** Under the 487 Regulations, every Post, i.e., the Embassy is required to appoint a Country Narcotics Coordinator and to develop Post-specific procedures for advance review of covered participants and the key individuals of foreign government and non-U.S. NGOs. This advance review must occur before these entities receive assistance covered by the 487 Regulations. (Key individuals of Public International Organizations (PIOs) and U.S. NGOs do not have to be reviewed, unless there is reason to suspect drug trafficking.) If an individual or entity passes the review process, assistance may be provided. If not, operating units must take appropriate steps as set forth in Sections 140.12, 13 or 14 of the 487 Regulations. The final determination is made by the post's Country Narcotics Coordinator who has 14 days, with a possible 14-day extension, to complete the review process.
- b.** The Mission is responsible for obtaining the necessary post review for Mission-funded activities. For non-Mission financed agreements, the cognizant technical office is responsible for obtaining the necessary post review for its activities. The cognizant technical office can request the mission to assist in obtaining the necessary post review.

c. A key individual who has been reviewed for a particular agreement is not required to be reviewed for subsequent amendments to the agreement or for other agreements unless there is reasonable suspicion.

### **206.3.10 Certification Procedures**

Effective Date: 05/01/1999

a. The Mission is responsible for obtaining certifications for Mission-financed activities. The cognizant technical office is responsible for obtaining certifications for non-Mission financed activities.

b. Key individuals of U.S. and non-U.S. NGOs must complete the Mandatory Reference - [Key Individual Certification](#) (or a substantive alternative) before agreements providing covered assistance are signed.

c. Covered participants must complete the certification set forth in Mandatory Reference - [Participant Certification](#) - (or a substantive alternative) before USAID approves the training.

d. Operating units are authorized to prepare the certifications in languages other than English or to seek additional information necessary to comply with Post review procedures.

e. A key individual who has submitted a certification for a particular agreement is not required to submit another certification for the life of that agreement. A new certification is not required from a key individual or covered participant for a other agreements if they have completed one in the preceding 365-day period, unless the Mission directs otherwise.

f. For covered participants, certifications are obtained as part of the USAID participant training process in [ADS 253](#), Training for Development.

g. Certifications are retained as part of the relevant contract, grant, or other agreement file or participant file.

### **206.3.11 Key Individuals**

Effective Date: 05/01/1999

a. For Mission-financed agreements The Mission is responsible for identifying key individuals.

b. For non-Mission financed agreements, the cognizant technical office is responsible for identifying key individuals, in consultation with the Mission as appropriate.

c. Key individuals of non-U.S. NGOs are the same individuals for both the post

review and certifications, unless the Mission determines otherwise.

**d.** In the case of U.S. NGOs, the key individual is the in-country "project manger" or similar official principally responsible for administration of the USAID-financed activity. In cases where there is no in-country presence, there is no requirement to identify U.S.-based key individuals.

**e.** In the case of foreign governments, the key individuals are normally only the ministers and vice ministers who sign the agreement and additional ministry representatives authorized to sign implementation letters.

**f.** Because of the many types of organizations and scopes of agreements it is difficult to set forth any definitive criteria for the identification of key individuals of non-U.S. NGOs. For example, when a grant is not a substantial part of the total support of the organization, the key individual is normally only the "project manger" or another in-country person principally responsible for administration of the grant. In contrast, if USAID grants are a substantial portion of an in-country non-U.S. NGO's support, the key individuals are normally the in-country principal officers of the organization.

### **206.3.12 Clauses for USAID Agreements**

Effective Date: 05/01/1999

The following clauses (or a substantive alternative) are to be included in Covered Agreements.

**a. For SOAG, Limited Scope Grant Agreement (LSGA), and Other Foreign Government Agreements:**

See [ADS 350.3.1.3 paragraph h](#) and [350.3.2.2 paragraph q](#) or use the general termination clause at 350.3.1.3 paragraph e or 350.3.2.2 paragraph m which is broad enough to cover 487 issues but does not make specific reference to the regulations.

**b. For PIO Agreements:**

The Grantee shall make such reasonable efforts as are necessary to ensure that no funds or other support under this agreement are diverted in support of drug trafficking.

**c. For NGO Agreements:**

USAID reserves the right to terminate this [Agreement/Contract], to demand a refund or take other appropriate measures if the [Grantee/Contractor] is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

**d. If there are Covered Participants:**

USAID reserves the right to terminate assistance to, or take or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

**e. If there are loans over \$1000:**

(x) For any loan over \$1000 made under this [Agreement/Contract], the [Grantee/Contractor] shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the [Grantee/ Contractor] if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(xx) Upon notice by USAID of a determination under section (x) and at USAID's option, the [Grantee/Contractor] agrees to immediately cancel, accelerate or recall the loan, including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.

**f.** If there is a **Designated Subrecipient** [modify the clause to fit the category of subrecipient, e.g., if the designated subrecipient is a U.S. NGO, review is not required and subparagraph (1) can be deleted]:

(x) The [Grantee/Contractor] agrees not to disburse, or sign documents committing the [Grantee/Contractor] to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (1) any United States Government review of the Designated Subrecipient and its key individuals has been completed; (2) any related certifications have been obtained; and (3) the assistance to the Designated Subrecipient has been approved.

(xx) The [Grantee/Contractor] shall insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

"The [Grantee/Contractor] reserves the right to terminate this [Agreement/Contract] or take other appropriate measures if the [Subrecipient] or a key individual of the [Subrecipient] is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140."

## 206.4 MANDATORY REFERENCES

### 206.4.1 External Mandatory References

Effective Date: 05/01/1999

- a. [22 CFR Part 140, Prohibition on Assistance to Drug Traffickers, \(487 Regulations\) the implementing Department of State regulations](#)
- b. [Section 487 of the Foreign Assistance Act \(FAA\)](#)
- c. **State guidance cable (State 135276, 7/24/98)**

### 206.4.2 Internal Mandatory References

Effective Date: 05/01/1999

- a. [ADS 253, Training for Development](#)
- b. [ADS 350, Grants for Foreign Governments](#)
- c. [Key Individual Certification](#)
- d. [Participant Certification](#)

## 206.5 ADDITIONAL HELP

Effective Date: 05/01/1999

There are no additional help documents for this chapter.

## 206.6 DEFINITIONS

Effective Date: 05/01/1999

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions. Additionally, see the definitions in 140.3 of the 487 Regulations for definitions, some of which are repeated and expanded upon below.

### **covered countries**

Countries identified annually as major illicit drug-producing or drug-transit countries under Section 490(h) of the FAA as well as any country or portion of a country that the State Department determines is to be treated as a covered country under the 487 regulations. (Chapters 206, [253](#))

### **covered participant**

USAID-financed participant (including in-country) receiving a scholarship, fellowship, or other structured training of more than six hours but only where USAID specifically approves the individual participant. In the case of agreements with Public International Organizations (PIO), "covered participant" refers only to participants who are specifically

designated by USAID. (Chapter 206)

**key individual**

An official of a public or private entity receiving assistance who may be expected to principally control or benefit from the assistance, e.g., the principal operating officer of a firm. (Chapter 206)

**Non-Governmental Organization (NGO)**

Any non-governmental organization or entity, whether non-profit or profit-making, receiving or providing USAID-funded assistance under an assistance instrument or contract. (Chapter 206)

**reasonable suspicion**

Reasonable grounds to suspect that a key individual, recipient entity or participant may be or may have been involved in drug trafficking or have been convicted of a narcotics offense. (Chapter 206)

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