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# Legal Requirements for Government to Government (G2G) Assistance

A Mandatory Reference for ADS Chapter 220

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The following legal requirements must be addressed in the Project Appraisal Document (PAD) for Government to Government (G2G) assistance under [ADS Chapter 220](#). Additionally, these and other legal requirements are addressed in the reference documents:

- [ADS 350mac, Development Objective Agreement and Bilateral Project Agreement Template \(non-health\)](#);
- [ADS 350mad, Development Objective Agreement and Bilateral Project Agreement Template \(health\)](#);
- [ADS 220sae, Cost Reimbursement Implementation Letter Template \(non-health\)](#);
- [ADS 220saf, Cost Reimbursement Implementation Letter Template \(health\)](#);
- [ADS 220sag, Fixed Amount Reimbursement Implementation Letter Template \(non-health\)](#); and
- [ADS 220sah, Fixed Amount Reimbursement Implementation Letter Template \(health\)](#).

Please consult your Regional Legal Advisor (RLA) or General Counsel (GC) attorney concerning these and any additional legal requirements.

#### **(1) Partner Government Contribution**

[Section 110 of the Foreign Assistance Act of 1961](#), as amended, requires a Partner/Host Country contribution of 25 percent for all USAID projects funded with development assistance, childhood survival and health, and certain other categories of appropriated funds, where there is bilateral assistance resulting in partner government benefit and involvement. The requirement must be memorialized in the Bilateral Project Agreement negotiated with the partner government, in [ADS 220.3.2.7](#). Please consult [ADS 350.3.5](#) and your RLA or the Office of the General Counsel (GC) for guidance in implementing this requirement.

#### **(2) Budget Transparency**

A provision in the current appropriations act (Section 7086) prohibits assistance to the central government of a country that fails to make its national budget publicly available on an annual basis. The State Department is responsible for making budget transparency determinations and for recommending national interest waivers, if appropriate, to the Secretary. Consult with your RLA/GC and country desk officer concerning applicability of this provision to any assistance to the central government of

the partner country government to which you are planning government-to-government assistance.

### **(3) Generation and Management of Local Currency**

[ADS 624, Host Country-Owned Local Currency](#), includes guidance that funds must be deposited in a separate account in the name of the partner government and that host country-owned local currency generated through FAA or PL 480 programs must not be commingled with funds from other sources. Furthermore, [ADS 624.3.3, Local Currency Generation](#), states that "[l]ocal currency generations must be deposited separately to interest-bearing accounts" and "[a]ny interest generated on the interest-bearing account should be jointly programmed and managed." [Section 529 \(a\) of the FY 2002 Appropriations Bill for Foreign Operations, Export Financing, and Related Programs](#) also requires that local currencies be deposited in a separate account established by that government. For cash transfers (nonproject sector assistance), the country must be required to maintain such funds in a separate account and not commingle them with any other funds. Nonproject sector assistance funds may be exempt from the requirements only through the notification procedures of the Committees of Appropriations. [ADS 636.3.4, Banks and Depositories](#), states that advances of federal funds must be deposited and maintained in insured accounts whenever possible or as otherwise provided in USAID regulations or implementation guidance governing endowment funds. USAID neither requires separate depository accounts for funds provided to a recipient nor does USAID establish any eligibility requirements for depositories for funds provided to a recipient. However, the recipient must be able to account for the receipt, obligation, and expenditure of USAID funds and interest earned on the advances provided cumulatively by the U.S. Government.

Under the guidance found in [ADS 624, Host Country-Owned Local Currency](#); [ADS 627, Local Currency Trust Fund Management](#); and Policy Directive 18, Local Currency, USAID Missions must make an initial judgment at the project design phase and reach agreement (and document that agreement) with the partner country government on the following:

- Whether the anticipated uses of the dollars disbursed under a resource transfer project or the commodities financed will result in the generation of local currency for deposit into a separate account;
- If not generated, whether local currency will still be required to be set aside and deposited into a separate account;
- If deposited, what constitutes eligible, and ineligible, uses of the local currency; and
- Who will bear specific monitoring and oversight responsibilities?

Consult your RLA or GC regarding these determinations. Note that the decision whether local currency is generated and jointly programmed is separate from the partner country contribution.

#### **(4) Congressional Notification**

Unless Missions are advised of specific, applicable, special notification requirements by the RLA or Program Officer, Missions should follow annual Agency guidance by including a description of government-to-government projects, including those making use of partner country systems, in the country narrative section of the annual Congressional Notification. The narrative should contain a description of the obligating mechanism used (see [ADS 220.3.2.3](#)). Consult the Bureau for Legislative and Public Affairs (LPA) for annual guidance concerning Congressional Notification requirements (see number **(9)** below).

#### **(5) Country and Project (Activity) Level Restrictions and Prohibitions**

Statutory, regulatory, and policy restrictions and prohibitions on the use of appropriated funds, both at the country and project/activity levels, apply to government-to-government assistance under [ADS Chapter 220](#), and should be reviewed with the RLA or GC as well as the country desk officer, and reflected in the Project Appraisal Document. This includes any restrictions or limitations on sector and budget support under various accounts funding USAID projects, including Global Health and Child Survival restrictions; restrictions on funds transferred to USAID from other executive agencies; as well as family planning, HIV/AIDS, loss of U.S. jobs and anti-narcotics and terrorism restrictions. It also includes USAID's environmental regulations found at [22 CFR Section 216](#) and [ADS 204, Environmental Procedures](#). If the restrictions are not applicable, a rationale for that determination must be stated in the Project Appraisal Document.

#### **(6) Compliance with Agency Restrictions on Salary Supplementation**

The issue of providing USAID funding to supplement the salaries of any partner government officials or employees frequently arises in partner government implemented projects and programs. This issue is sensitive and is a matter of both congressional and Agency concern. It is USAID policy that USAID appropriated resources should not be used to fund salary supplements. To the degree that salary and benefits payments beyond those allowed by partner government personnel policies, rules and procedures are included in a USAID-funded project, they are the responsibility of the partner government. Any direct or indirect salary or benefit supplements funded by USAID require exceptional justification and must be approved by the cognizant Assistant Administrator. See [State Department Cable # 119780 \(April 15, 1988; Unclassified\)](#) for further guidance.

#### **(7) Branding and Marking**

USAID's statutory and regulatory branding and marking requirements apply to projects implemented through partner country systems (see [ADS 320](#)). PCS Teams are encouraged to use the flexibility built into [ADS 320](#) to ensure that branding and marking requirements are applied appropriately and in furtherance of project needs and promotion of the bilateral relationship.

#### **(8) Tax-Exempt Status of USAID-Funded Foreign Assistance**

USAID Missions are reminded that the Bilateral Project Agreement (discussed below) must include a provision clarifying that all assistance funded by USAID and implemented through partner country systems must be exempt from all taxes and related user fees, charges, etc. The RLA or GC can assist to ensure that such an exemption is included in the Bilateral Project Agreement.

#### **(9) Statutory Requirements for G2G Assistance**

The Approval of Use of Partner Country Systems (AUPCS) is designed to address many of the factors identified as possible Congressional concerns regarding G2G assistance. Missions/Operating Units should consult with their RLA/GC concerning any current (i.e., by Fiscal Year of funds being obligated) statutory directives, restrictions, prohibitions, or reporting requirements for G2G assistance. For example, the FY12 State and Foreign Operations Appropriations Act (SFOAA) contained the following requirements:

*Sec. 7031. (a) Limitation on Direct Government-to-Government Assistance-*

*(1) Funds appropriated by this Act may be made available for direct government-to-government assistance only if--*

*(A) each implementing agency or ministry to receive assistance has been assessed and is considered to have the systems required to manage such assistance and any identified vulnerabilities or weaknesses of such agency or ministry have been addressed; and*

*(i) the recipient agency or ministry employs and utilizes staff with the necessary technical, financial, and management capabilities;*

*(ii) the recipient agency or ministry has adopted competitive procurement policies and systems;*

*(iii) effective monitoring and evaluation systems are in place to ensure that such assistance is used for its intended purposes;*

*(iv) no level of acceptable fraud is assumed; and*

*(v) the government of the recipient country is taking steps to publicly disclose on an annual basis its national budget, to include income and expenditures;*

*(B) the recipient government is in compliance with the principles set forth in section 7013 of this Act;*

*(C) the recipient agency or ministry is not headed or controlled by an organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act;*

*(D) the Government of the United States and the government of the recipient country have agreed, in writing, on clear and achievable objectives for the use of such assistance, which should be made available on a cost-reimbursable basis; and*

*(E) the recipient government is taking steps to protect the rights of civil society, including freedom of association and assembly.*

*(2) In addition to the requirements in subsection (a), no funds may be made available for direct government-to-government assistance without prior consultation with, and notification of, the Committees on Appropriations: Provided, that such notification shall contain an explanation of how the proposed activity meets the requirements of paragraph (1): Provided further, That the requirements of this paragraph shall only apply to direct government-to-government assistance in excess of \$10,000,000 and all funds available for cash transfer, budget support, and cash payments to individuals.*

*(3) The Administrator of the United States Agency for International Development (USAID) or the Secretary of State, as appropriate, shall suspend any direct government-to-government assistance if the Administrator or the Secretary has credible information of material misuse of such assistance, unless the Administrator or the Secretary reports to the Committees on Appropriations that it is in the national interest of the United States to continue such assistance, including a justification, or that such misuse has been appropriately addressed.*

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*(6) None of the funds made available by this Act may be used for any foreign country for debt service payments owed by any country to any international financial institution: Provided, that for purposes of this subsection, the term "international financial institution" has the meaning given the term in section 7029(g) of this Act.*

## **(10) Defense Base Act**

The requirements of the Defense Base Act (DBA) (codified at 42 U.S.C. § 1651–1654) apply to contracts let by partner governments pursuant to G2G project agreements if

USAID “approves” such contracts financed by USAID. USAID approval for purposes of the DBA is triggered when:

- USAID retains the right to approve a contract or its terms and conditions, or
- USAID can control or influence the execution of a contract or inclusion of terms and conditions in a contract.

USAID approval, for purposes of the DBA, is not triggered by:

- USAID approval of a partner government’s contracting or procurement processes; or
- USAID approval of or veto over the selection of a contractor.

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