



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition and Assistance

Issued: September 24, 2004

AAPD 04-14

Certification Regarding Terrorist Financing Implementing E.O. 13224 (Revision 2)

Subject Category:
Type:

Assistance
Policy/Procedure

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD:

Is New Replaces/ Amends
AAPD No: 04-07

Precedes change to:

AIDAR Part(s) _____ Appendix
 USAID Automated Directives System (ADS) Chapters _____
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to:

Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source...
 Other or N/A _____

**New Provision/Clause
Provided Herein:**

Yes; Scheduled update to Prodoc: ASAP (tent. 12/04)
 No

(signature on file)
Jeffery Bell (Acting Director)

1. PURPOSE:

The purpose of this AAPD is to revise the Certification Regarding Terrorist Financing, originally issued in AAPD 02-19 and reissued in AAPD 04-07. This AAPD also provides information to assist Agreement Officers in guiding applicants to complete the certification.

2. BACKGROUND:

AAPD 02-19, issued December 31, 2002, required USAID Agreement Officers to obtain a certification from both U.S. and non-U.S. non-governmental organizations, before the organization could receive an award of a grant or cooperative agreement, to the effect that the organization does not support terrorism.

Some organizations found the language of the certification unclear, and were concerned that the AAPD did not provide guidance on the recipient's liability for the actions of subrecipients or beneficiaries. In response to these concerns, USAID issued AAPD 04-07. In revising AAPD 04-07, USAID also provides the guidance below. The certification requirement set forth in this AAPD, as was the case in AAPD 02-19 and AAPD 04-07, applies to USAID grants and cooperative agreements to U.S. and non-U.S. non-governmental organizations worldwide.

3. GUIDANCE:

Before making the award of a grant or cooperative agreement to a U.S. or non-U.S. non-governmental organization, the Agreement Officer must obtain the attached certification from the organization.

The purpose of the Certification is to provide USAID with assurances that it is not entering into an assistance agreement with an organization that provides or has provided assistance to terrorists or for terrorist activity. USAID employees could be liable under 18 U.S.C. § 2339A ("Providing material support to terrorists"), § 2339B ("Providing material support to designated foreign terrorist organizations), and § 2339C ("Prohibitions against the financing of terrorism") if they knowingly provide assistance to an organization that, in turn, provides or has provided material support or resources for terrorist acts, or to foreign terrorist organizations, or in violation of United Nations conventions and protocols. The Certification is consistent with states' obligations under United Nations Security Council (UNSC) Resolution 1373 (2001).

The Certification requires the applicant to state that, to the best of its current knowledge, it did not provide, within the previous ten years, and it will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that has engaged or engages in terrorist activity, as described in the Certification. This would include, without limitation, any organization designated by the United States Government as a Foreign Terrorist Organization under § 219 of the Immigration and Nationality Act, as amended (8 U.S.C. § 1189), any individual or entity designated by the United States Government as a Specially Designated Terrorist or

Specially Designated Global Terrorist, and any individual or entity designated by the United States Government in or pursuant to United States Executive Orders 12947 (“Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process”) and 13224 (“Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism”).

The purpose of the clause in the Certification that limits an applicant’s statement only to material support or resources that were provided within the previous ten years is to make this requirement more manageable. It also is based on the timing of operative Legislative and Executive branch actions that provided many of the relevant authorities available in the fight against terrorist financing. For example, it was in 1995 that the authority of the International Emergency Economic Powers Act was focused on international finance sanctions related to the threat of terrorism. Specifically, on January 23, 1995, President William J. Clinton issued Executive Order 12947, referred to in the preceding paragraph. As of the date of adoption of this AAPD, the ten-year requirement precedes the enactment in 1996 and the implementation in 1997 of the Antiterrorism and Effective Death Penalty Act, which codified the criminal prohibition against providing material support or resources to designated foreign terrorist organizations (18 USC 2339B) into the U.S. criminal code. Notwithstanding the temporal limits of this clause with respect to the provision of material support or resources, an applicant must consider information more than ten years old, of which it has or should have knowledge, in complying with its obligations under the Certification.

USAID may consider an applicant to be in compliance with its obligations under the Certification, if the applicant can verify that:

(a) it has not provided, and does not and will not knowingly provide, material support or resources to any individual or entity that (i) appears on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury’s Office of Foreign Assets Control (OFAC) or (ii) is included in any supplementary information relating to prohibited individuals or entities that may be provided by USAID to the applicant. The master list can be found at the OFAC website identified in the Certification. For purposes of the master list, “SDT” indicates Specially Designated Terrorist, “SDGT” indicates Specially Designated Global Terrorist, and “FTO” indicates a Foreign Terrorist Organization;

(b) it has not provided, and does not knowingly provide, material support or resources to any individual or entity designated by the UNSC sanctions committee established under UNSC Resolution 1267 (1999) (the “1267 Committee”) [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the applicant organization may refer to the consolidated list available online at the Committee’s website identified in the Certification; and

(c) in addition to reviewing the OFAC master list and the 1267 Committee’s list referred to in the Certification, it also must take into account its own knowledge and public

information in making the Certification before providing any material support or resources to any individual or entity. This means that the applicant is expected to consider public information of an individual or entity's terrorist ties that is either reasonably available to the applicant (such as, for example, terrorist ties identified in news media or in an official, published designation) or that, from the totality of the facts and circumstances surrounding the individual or entity's interactions with the recipient organization or related to the individual or entity's reputation in the community, the applicant should be aware of an individual or entity's terrorist ties.

The Certification also requires the recipient organization to implement reasonable monitoring and oversight procedures to safeguard against assistance from being used, either directly or indirectly, to provide material support or resources to individuals or entities that engage in terrorist activity.

An applicant may be in compliance with its obligations under the Certification if it provided material support or resources to an individual or entity that, at the time such support or resources was provided, had not been designated by the United States Government as a Foreign Terrorist Organization, or as a Specially Designated Terrorist or a Specially Designated Global Terrorist, or had not been designated by the United States Government in or pursuant to Executive Orders 12947 or 13224, or had not been designated by the 1267 Committee, and that individual or entity subsequently is so designated.

If the recipient organization learns that any individual or organization that it provides material resources or support to, or with which it engages in transactions or dealings in property or interests in property, has been designated by the United States Government as a Foreign Terrorist Organization, or as a Specially Designated Terrorist or a Specially Designated Global Terrorist, or has been designated by the United States Government in or pursuant to Executive Orders 12947 or 13224, or has been designated by the 1267 Committee, or otherwise engages in terrorist acts, the recipient organization must immediately notify USAID and must immediately cease such support or transactions or dealings.

The definition in the Certification for the term "material support and resources" is the same as the definition for that term used in 18 U.S.C. § 2339A(b). For purposes of the definition of the term "terrorist act" contained in clause (i) of section 3.b. of the Certification, the United Nations Conventions and Protocols referred to can be found at <http://untreaty.un.org/English/Terrorism.asp>. The definition contained in clause (ii) of section 3.b. of the Certification is taken from 22 U.S.C. § 2656f(d)(2), i.e., the second definition used in Foreign Terrorist Organization designations. The definition contained in clause (iii) of section 3.b. of the Certification is taken from the Convention on the Suppression of the Financing of Terrorism, art. 2(b), and can be found on the UN terrorism conventions website referred to above.

It is not the intention of USAID that the language in the Certification referring to the provision of material support and resources would apply to the ultimate beneficiaries of

USAID assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless the applicant has reason to believe that one or more of such recipients has engaged or engages in terrorist activity, as described in the Certification. Rather, that language applies to prime grantees or cooperating agencies and other intermediaries (such as sub-grantees) that receive USAID funds or USAID-financed commodities which ultimately are to be furnished to the above-described beneficiaries.

It also is not the intention of USAID that the obligations under paragraph 1 of the Certification would apply to the procurement of goods and/or services by the applicant that are acquired in the ordinary course of business through contract or purchase. For example, an applicant's certification would not be considered to "reach down" to a landlord that leases office space to the applicant or to a vendor that sells office supplies to an applicant, unless the applicant has reason to believe that such landlord or such vendor has engaged or engages in terrorist activity, as described in the Certification.

If USAID determines that a recipient organization has violated any term or condition of the Certification, USAID may immediately and unilaterally terminate the assistance agreement with the recipient organization.

4. POINT OF CONTACT:

Please direct any questions to Raquel Powell, M/OAA, Phone: (202) 712-0778, e-mail: rpowell@usaid.gov or Gary Winter, GC, Phone: (202)712-1548, e-mail: gwinter@usaid.gov.

Certification

By signing and submitting this application, the prospective recipient provides the certification set out below:

1. The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3.

2. The following steps may enable the Recipient to comply with its obligations under paragraph 1:

a. Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not (i) appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website :

<http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID to the Recipient.

b. Before providing any material support or resources to an individual or entity, the Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's website:

<http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.

c. Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

d. The Recipient also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

3. For purposes of this Certification-

a. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance,

safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”

b. “Terrorist act” means-

(i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: <http://untreaty.un.org/English/Terrorism.asp>); or

(ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

c. “Entity” means a partnership, association, corporation, or other organization, group or subgroup.

d. References in this Certification to the provision of material support and resources shall not be deemed to include the furnishing of USAID funds or USAID-financed commodities to the ultimate beneficiaries of USAID assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless the Recipient has reason to believe that one or more of these beneficiaries commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

e. The Recipient’s obligations under paragraph 1 are not applicable to the procurement of goods and/or services by the Recipient that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, etc., unless the Recipient has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

Signed: _____
(Typed Name and Title)
(Name of Organization)

Date