



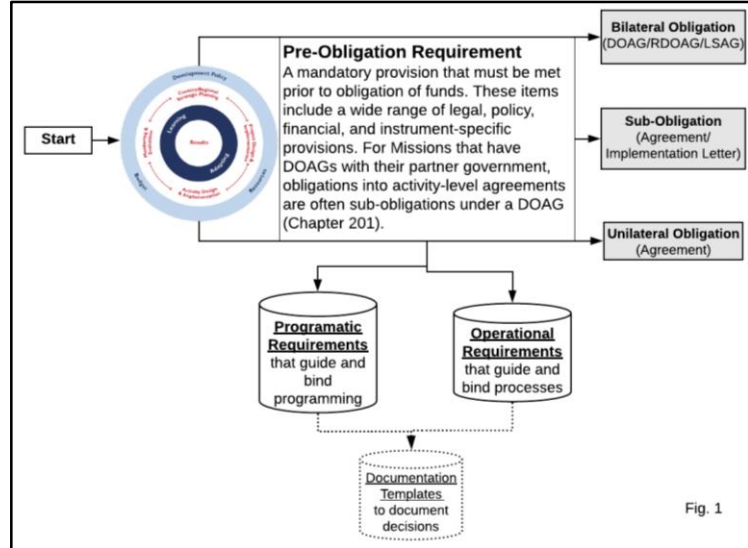
Pre-Obligation Requirements for Government-to-Government (G2G) Assistance

A Mandatory Reference for ADS Chapter 220

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I. OVERVIEW

U.S. Agency for International Development (USAID) funds used for Government-to-Government (G2G) assistance are subject to numerous requirements that Operating Units (OUs) must meet prior to obligation and/or expenditure. Typically, pre-obligation requirements for G2G assistance are both programmatic and operational in nature. They represent policy, legal, technical, and/or other requirements that guide the G2G programming, and financial, risk, and/or other requirements that guide the G2G business processes, respectively. Although USAID often refers to these as "pre-obligation requirements," OUs might properly address some of them at a sub-obligation stage if they initially obligate the funding in question into a Development Objective Agreement (DOAG), which is the case for most G2G agreements (see Figure 1).



This Mandatory Reference describes the types of requirements that apply for any type of obligation of funds for G2G assistance, regardless of policy priority, sector, instrument, or specific business process. In addition, this Mandatory Reference describes the following:

- Where do you identify the need for the requirement?
- Where do you address the requirement?
- Where do you document that you have met the requirement?
- Does the monitoring trigger any changes to the applicable existing or newly identified and established requirements?

OUs should work with their Resident Legal Officer (RLO) or the Office of the General Counsel (GC) to identify, address, and document these requirements through the entire process of planning, designing, implementing, and closing a G2G activity.

II. PROCESS TO IDENTIFY, ADDRESS, AND DOCUMENT PRE-OBLIGATION AND OTHER G2G LEGAL REQUIREMENTS

The time between the inception of an idea for a G2G activity and the obligation of funds into a G2G agreement varies by Mission, but the G2G requirements to meet prior to the obligation of funds are the same. [ADS Chapter 220](#) describes the process for planning, designing, implementing, and closing a G2G activity, also depicted in the [G2G Process Map](#). Each step of the process provides an entry point to identify, address, and/or document pre-obligation requirements at the right time (see Figure 2). As part of the G2G planning and design, the OU establishes eligibility and viability, and identifies a set of parameters that will guide the design. In setting these parameters, among others, guiding questions that help identify and address applicable pre-obligation requirements of any type include the following:

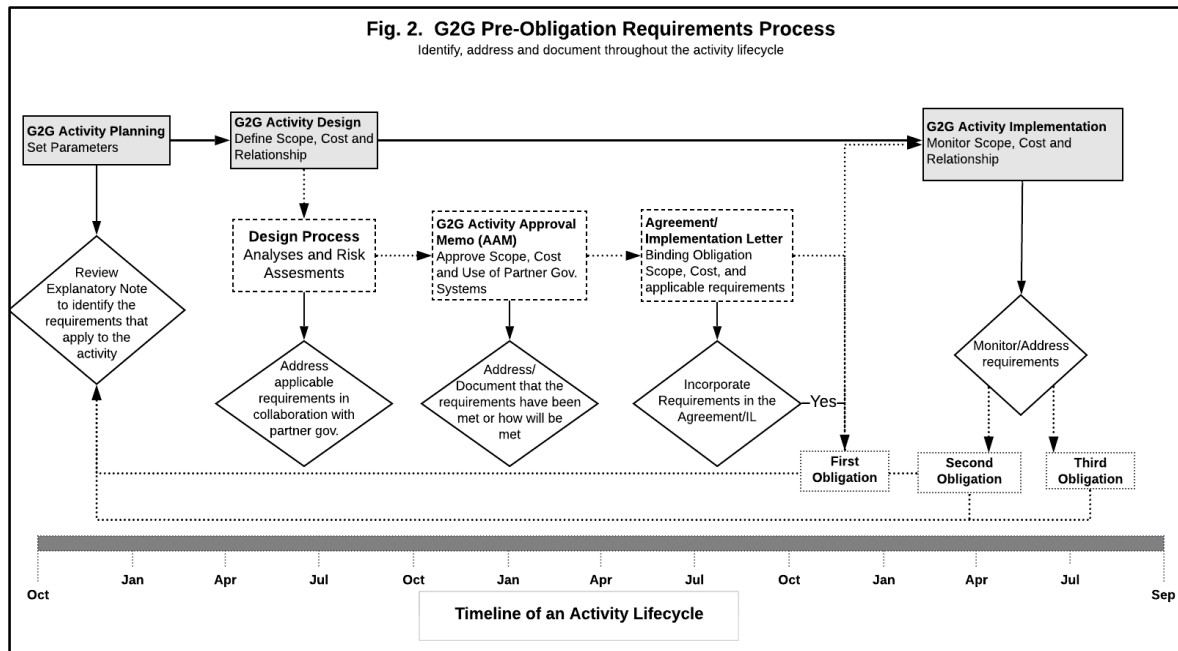
a. G2G Planning and Design

- i. Is the partner government eligible for G2G assistance?
- ii. What requirements apply to your G2G activity and must you meet prior to obligating funds?
- iii. What requirements inform your G2G design and must you incorporate in the G2G agreement?

The Activity Concept Approval Memorandum (ACAM) and the Activity Approval Memorandum (AAM) provide two, but not the only, junctures to document decisions on planning and design of a G2G activity, which include the identification and satisfaction of pre-obligation requirements. Once the OU incorporates the applicable requirements into a G2G agreement and signs it, the following questions track potential triggers during implementation and closing:

b. G2G Implementation and Close-Out

- i. What requirements should the OU monitor, update, or re-assess during implementation?
- ii. What is the state of, and what have we learned about, the applicable requirements? Can USAID use that information for future G2G agreements?



III. EXPLANATORY NOTE FOR G2G PRE-OBLIGATION REQUIREMENTS

OUs must satisfy the following legal and other pre-obligation requirements for G2G assistance under [ADS Chapter 220](#). These requirements apply to any type of G2G obligation, regardless of policy priority, sector, instrument, or specific business process. OUs should address them at the appropriate stage of planning and designing a G2G activity, according to the Mission’s relevant Mission Order or other established process. Additionally, the templates for DOAGs and G2G agreements linked below cover these and other legal requirements:

- [DOAG and Bilateral Project Agreement Template](#);
- [Fixed-Amount Reimbursement Implementation Letter Template](#);
- [Cost-Reimbursement Implementation Letter Template](#);
- [ADS 220sai, Sector Program Assistance Agreement Template](#); and
- [ADS 220saj, Balance of Payments/General Budget Support Assistance Agreement Template](#).

| What is Required? | What Is It? – Explanatory Note (Questions and Examples) | Where to Find More Information? |
|--|--|---|
| Determination of Eligibility under Section 7031(a) of the Annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) | Statutory Requirement, with criteria listed in Section 7031(a) of the SFOAA. The law requires assessments of the partner government’s technical, financial, and management capabilities; competitive procurement policies and systems; anti-corruption measures; and budgetary transparency. | Section 7031(a) of Public Law (P.L.) 116-6, (incorporated by reference into Section 7031(a) of the subsequent annual Appropriations Acts) ; and ADS Chapter 220 . |
| Fiscal Year (FY) Statutory Checklists:¹ <ul style="list-style-type: none"> • Country-Level Statutory Review; and • Activity-Level Statutory Review | Statutory, Regulatory, and Policy Requirements. Statutory, regulatory, and policy restrictions and prohibitions on the use of appropriated funds, both at the country and activity levels, that apply to government-to-government assistance under ADS Chapter 220 . The Operating Unit (OU) should review them with their Resident Legal Officer (RLO) or the Office of the General Counsel (GC), as well as the relevant Country Desk Officer, and reflect them in the Activity Approval Memorandum. This includes any restrictions or limitations on sector and budget support under various accounts that finance USAID’s projects, including Global Health and Child Survival; restrictions on funds transferred to USAID from other Executive Branch Departments and Agencies; as well as restrictions related to voluntary family planning, HIV/AIDS, loss of U.S. jobs, and anti-narcotics and terrorism. It also includes USAID’s environmental regulations found at Section 216 of Title 22 of the Code of Federal Regulations (CFR) and ADS Chapter 204, Environmental Procedures . If the restrictions are not applicable, the OU must state a rationale for that determination in the Activity Approval Memorandum. | ADS Chapter 220 ; Section 216 of Title 22 of the CFR ; and ADS Chapter 204, Environmental Procedures . |
| Approval of the G2G Activity Planning | Policy Requirement. The G2G Activity Planning Approval confirms the eligibility based on the review required by Section 7031(a) of the SFOAA or the use of notwithstanding authority, if applicable, and establishes the viability of using a partner government’s systems, as well as the parameters that will guide the activity’s design. | ADS Chapter 220 . |

¹ Statutory Requirements may be updated for each Fiscal Year (FY). OUs should consult with the RLO before completing these, especially if an activity’s obligation includes funds from different FYs.

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|--|--|---|
| <p>Approval of the G2G Activity and the Use of a Partner Government's Systems</p> | <p>Policy Requirement. A G2G activity requires that partner governments have the capacity to implement the activity. Thus, in addition to approving the G2G activity, Mission Directors must also approve the use of partner government systems, for such purpose (formerly known as the Approval for the Use of Partner Government Systems (AUPGS), through the Activity Approval Memo (AAM)</p> | <p>ADS Chapter 201 and ADS Chapter 220.</p> |
| <p>Partner Government's Contribution</p> | <p>Statutory Requirement. Section 110 of the Foreign Assistance Act (FAA) of 1961, as amended, requires a contribution of 25 percent from the partner/host government for all USAID projects funded from the Development Assistance and Childhood Survival and Health accounts, and certain other categories of appropriated funds, when bilateral assistance will result in benefit to, and the involvement of, a partner government. The OU must memorialize the requirement in the DOAG or standalone G2G agreement negotiated with the partner government.</p> | <p>Section 110 of the FAA; ADS Chapter 220.5.3.3(II)(2)(b); and ADS Chapter 350.3.5.</p> <p>OUs should consult their RLO or GC for further guidance in implementing this requirement.</p> |
| <p>Branding and Marking</p> | <p>Statutory and Regulatory Requirements. USAID's statutory and regulatory branding and marking requirements apply to projects implemented through partner-government systems and institutions (see ADS Chapter 320). OUs should use the flexibility built into ADS Chapter 320 to ensure they apply the Agency's requirements for branding and marking appropriately and in furtherance of the project's needs and the bilateral relationship.</p> | <p>ADS Chapter 320.</p> <p>OUs should consult the Bureau for Legislative and Public Affairs (LPA) for further guidance in implementing this requirement.</p> |
| <p>Tax-Exempt Status of USAID-Funded Foreign Assistance</p> | <p>Statutory Requirement. The Bilateral Project Agreement (discussed below) must include a provision to clarify that all assistance funded by USAID and implemented through partner-government systems and institutions must be exempt from all taxes and related user fees, charges, <i>etc.</i></p> | <p>OUs should consult their RLO or GC for further guidance in implementing this requirement.</p> |
| <p>Congressional Notification (CN)</p> | <p>Statutory Requirement. Unless Missions are advised of specific, applicable, special notification requirements by an RLO or GC, OUs should follow annual Agency guidance by including a description of G2G projects, including those that make use of partner-government systems and institutions, in the "Country Narrative" section of the annual CN or Congressional Budget Notification for the OU. The narrative should contain a description of the obligating mechanism used (see ADS 220.3.2.3).</p> | <p>ADS 220.3.2.3.</p> <p>OUs should consult LPA for annual guidance concerning requirements for CNs.</p> |

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| REQUIRED AS APPLICABLE | | |
| <p>Compliance with the Defense Base Act (DBA), Sections 1651-1654 of Title 42 of the United States Code (U.S.C.)</p> | <p>Statutory Requirement. Labor and compensation standards applicable to contracts that entail the employment of Cooperating-Country Nationals (<i>i.e.</i>, non-U.S. citizens in a host country). Applicable to contracts let by partner governments pursuant to G2G project agreements financed by USAID if the Agency “approves” such contracts.</p> <p>For purposes of the DBA, USAID’s approval is triggered when:</p> <ul style="list-style-type: none"> ● 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 the inclusion of terms and conditions in a contract. <p>For purposes of the DBA, USAID’s approval is not triggered by the following:</p> <ul style="list-style-type: none"> ● USAID’s approval of a partner government’s contracting or procurement processes; or ● USAID approval of, or veto over, the selection of a contractor. | <p><u>Sections 1651-1654 of Title 42 of the U.S.C.</u></p> |

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| <p>Generation and Management of Host-Country-Owned Local Currency</p> | <p>Statutory and Policy Requirements. A provision consistently included in USAID's annual Appropriations Acts (e.g., for FY 2020, Section 7026(a) of P.L. 116-94) and ADS Chapter 624, Host Country-Owned Local Currency, require the deposit of local currencies generated by programs authorized by the FAA or the Food for Peace Act (P.L. 480) in a separate account established by a partner government. 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."</p> <p>For cash transfers (non-project sector assistance), the partner government must maintain such funds in a separate account and not commingle them with any other funds. In rare circumstances, USAID can exempt non-project sector assistance funds from these requirements only through the notification procedures of the Committees of Appropriations.</p> <p>ADS Chapter 636.3.4, Banks and Depositories, states that a partner government must deposit and maintain advances of Federal funds in insured accounts whenever possible, or as otherwise provided in USAID's regulations or implementation guidance that govern endowment funds. USAID neither requires separate depository accounts for funds provided to a recipient, nor does the Agency 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's funds and any interest earned on the advances provided cumulatively by the U.S. Government.</p> <p>Under the guidance found in ADS Chapter 624; ADS Chapter 627, Local Currency Trust Fund Management; and USAID Policy Determination 18, Local Currency, USAID's Missions must make an initial judgment at the project-design phase and reach agreement (and document that</p> | <p>Annual Appropriations Acts for USAID (usually Section 7026(a)); ADS Chapter 624; ADS Chapter 627; ADS Chapter 636; and USAID Policy Determination 18.</p> <p>OUs should consult their RLO or GC regarding these determinations.</p> |

| What is Required? | What Is It? – Explanatory Note (Questions and Examples) | Where to Find More Information? |
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| | <p>agreement) with the partner government on the following:</p> <ul style="list-style-type: none">● 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 the eligible, and ineligible, uses of the local currency; and● Who will bear specific monitoring and oversight responsibilities? <p>Note that the decision whether local currency is generated and jointly programmed is separate from the partner government's contribution.</p> | |

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| Compliance with USAID's Restrictions on Salary Supplementation | <p>Policy Requirement. USAID's policy is that the Agency's appropriations should not supplement the salaries of any officials or employees of a partner government. Payments of salaries and benefits beyond those allowed by a partner government's personnel policies, rules and procedures are the responsibility of the partner government. Any direct or indirect salary or benefit supplements funded by USAID require an exceptional justification approved by the cognizant Assistant Administrator or Assistant to the Administrator.</p> <p>The issue of providing USAID funding to officials in partner governments frequently arises in G2G projects and programs. This issue is sensitive and is a matter of both Congressional and Agency concern.</p> | <p><u>U.S. Department of State Cable # 119780 (April 15, 1988; Unclassified)</u></p> |

Annex 1.²

ILLUSTRATIVE CHECKLIST OF GOVERNMENT-TO-GOVERNMENT (G2G) PRE-OBLIGATION REQUIREMENTS

| G2G Pre-Obligation Requirement | When to Address? | | | Check box |
|---------------------------------------|-----------------------------|--|---------------------------|--------------------------|
| | Bilateral Obligation (DOAG) | Sub-Obligation (Implementation Letter) | Unilateral G2G Obligation | |
| Generally Required | | | | |
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| Required, As Applicable | | | | |
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| Sector-Specific, As Applicable | | | | |
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² Some countries utilize the DOAG as an obligating document but not all. For this reason, some G2G obligations can be sub-obligations in the form of an Implementation Letter (either FAR or CR) under a DOAG. In absence of a DOAG, G2G activities can be unilateral obligations in the form of a FARA or CR Agreement.