

due to changed circumstances. Approved waivers “flow down” to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers’ determinations regarding waiver requests are subject to appeal to the Principal Officer’s cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer’s waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity.* Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance as defined in 2 CFR 200.77 but before closeout as defined in 2 CFR 200.16., the USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the date of completion of the affected programs, projects, activities, public communications or commodities.

(k) The USAID Identity and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward must be followed when applying for reimbursement of additional marking costs.

PARTS 701–779 [RESERVED]

PART 780—NONPROCUREMENT DEBARMENT AND SUSPENSION

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Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 76 FR 34144, June 13, 2011, unless otherwise noted.

§ 780.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USAID policies and procedures for non-

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procurement debarment and suspension. It thereby gives regulatory effect for USAID to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (31 U.S.C. 6101 note).

§ 780.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

- (a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “non-procurement transaction” at 2 CFR 180.970);
- (b) Respondent in a USAID suspension or debarment action;
- (c) USAID debarment or suspension official; and
- (d) USAID grants officer, agreements officer, or other official authorized to enter into any type of non-procurement transaction that is a covered transaction.

§ 780.30 What policies and procedures must I follow?

The USAID policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

Subpart A—General

§ 780.137 Who in USAID may grant an exception to let an excluded person participate in a covered transaction?

The Director, Office of Acquisition and Assistance or designee, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Director, Office of Acquisition and Assistance or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the

government-wide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 780.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the USAID under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the USAID non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 780.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 780.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant’s compliance with subpart C of 2 CFR part 180, and supplemented by subpart C of this

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part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–H [Reserved]

Subpart I—Definitions

§ 780.930 Debarring Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.930).

The Debarring Official for USAID is the Director of the Office of Acquisition and Assistance.

§ 780.1010 Suspending Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.1010).

The Suspending Official for USAID is the Director of the Office of Acquisition and Assistance.

Subpart J [Reserved]

PART 782—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

782.10 What does this part do?

782.20 Does this part apply to me?

782.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

782.225 Whom in USAID does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

782.300 Whom in USAID does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

782.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

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Subpart E—Violations of This Part and Consequences

782.500 Who in USAID determines that a recipient other than an individual violated the requirements of this part?

782.505 Who in USAID determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions

782.605 Award (USAID Supplement to Government Wide Definition at 2 CFR 182.605).

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 76 FR 34574, June 14, 2011, unless otherwise noted.

§ 782.10 What does this part do?

This part requires that the award and administration of USAID grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR Part 182) for USAID's grants and cooperative agreements; and

(b) Establishes USAID policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government wide implementing regulations.

§ 782.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a USAID grant or cooperative agreement; or

(b) USAID awarding official.

§ 782.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.