

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

AUTHORITY: 22 U.S.C. 2381(a).

§ 205.1 Grants and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other organization to participate in any USAID program for which they are otherwise eligible. In the selection of service providers, neither USAID nor entities that make and administer sub-awards of USAID funds shall discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, the term "program" refers to Federally funded USAID grants and cooperative agreements, including sub-grants and sub-agreements. The term also includes grants awarded under contracts that have been awarded by USAID for the purpose of administering grant programs. As used in this section, the term "grantee" includes a recipient of a grant or a signatory to a cooperative agreement, as well as sub-recipients of USAID assistance under grants, cooperative agreements and contracts.

(b) Organizations that receive direct financial assistance from USAID under any USAID program (including through a prime award or sub-award) may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), as part of the programs or services directly funded with direct financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. Nothing in this part restricts USAID's authority under applicable federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A religious organization that applies for, or participates in, USAID-funded programs or services (including through a prime award or sub-award) may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, a religious organization that receives financial assistance from USAID may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) USAID must implement its programs in accordance with the Establishment Clause. Nothing in this part shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law. USAID will consult with the U.S. Department of Justice if, in implementing a specific program involving overseas acquisition, rehabilitation, or construction of structures used for explicitly religious activities, there is any question about whether such funding is consistent with the Establishment Clause. USAID will describe any program implemented after such consultation on its Web site.

(e) An organization that participates in programs funded by financial assistance from USAID (including through a prime award or sub-award) shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the

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basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(f) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall require only religious organizations to provide assurances that they will not use monies or property for explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Any such restrictions shall apply equally to religious and secular organizations. All organizations that participate in USAID programs (including through a prime award or subaward), including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization receives financial assistance from USAID.

(h) Many USAID grant programs require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. Grantees should consult with the appropriate USAID program office to determine the scope of any applicable requirements. In USAID programs in which an applicant must show that it is a nonprofit organization,

other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(i) Decisions about awards of USAID financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization, or lack thereof.

(j) Nothing in this part shall be construed as authorizing the use of USAID funds for the acquisition, construction, or rehabilitation of religious structures inside the United States.

(k) The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

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