



**USAID**  
FROM THE AMERICAN PEOPLE

## FY 2010 Statutory Checklists

Additional Help  
for ADS Chapters 200-203

Revised Additional Help: 06/29/2010  
Responsible Office: GC  
File Name: 202sag\_062910

## FY 2010 Statutory Checklists

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. COUNTRY CHECKLIST .....</b>	<b>3</b>
<b>III. ACTIVITY CHECKLIST .....</b>	<b>11</b>
Part A. Planning .....	11
Part B. Congressional Notifications .....	22
Part C. Obligating Documents .....	23
 <b>ANNEX:</b> Changes Made by the FY 2010 Department of State, Foreign Operations, and Related Programs Appropriations Act to Current Law, Memorandum from GC to COO and LPA, December 24, 2009	

### **I. INTRODUCTION**

The following checklists are intended to be convenient references when planning and implementing assistance programs. The checklists do not have every country prohibition or restriction. Consult the attorneys assigned to your Bureau or Mission to determine if there are additional country-specific or activity-specific prohibitions and "notwithstanding" authorities. With regard to the applicability of a particular checklist item, please contact the listed point of contact, the USAID country desk officer, or the attorneys assigned to your Bureau or Mission, as applicable.

Please see ADS 201.3.3.3 to determine when a checklist should be prepared. In doing a checklist you make a reasonable inquiry, determine the applicability of each statutory reference, and set forth any additional comments or issues (for example, "We are not aware of any information that requires action under this section" or "To the best of our knowledge, we are not aware of any violations under this provision" or "Not applicable because no FY10 ESF funds will be programmed to assist the government of X").

#### **• Country Checklist**

The Country Checklist includes the important provisions of general application from the Foreign Assistance Act of 1961, as amended (FAA), and the FY 2010 Department of State, Foreign Operations, and Related Programs Appropriations Act, (FY 2010 Act), P.L. 111-117, December 16, 2009. Please note that the Country Checklist does not list every statutory or regulatory provision applicable to a particular country.

- **Activity Checklist**

The Activity Checklist has the activity-specific provisions of the FAA, and the FY 2010 Act.

- **Notwithstanding Authorities**

There are various "notwithstanding" authorities that USAID might use to provide assistance when it would otherwise be prohibited. Some examples follow:

1. Disaster Assistance (FAA Sec. 491).
2. Health and Disease Prevention (FAA 104(c)(4); and child survival activities and disease programs including activities relating to HIV/AIDS (FY 2010 Act, Sec. 7060). Please note that these health-related notwithstanding authorities do not cover family planning activities.
3. Assistance for Europe, Eurasia and Central Asia (AEECA) (Title III of the FY 2010 Act). Prior year funds under the heading "Assistance for Eastern Europe and the Baltic States" and "Assistance for the Independent States of the Former Soviet Union," and currencies generated by or converted from such funds, shall be available for use in any country for which funds are made available without regard to the geographic limitations of the account heading under which such funds were originally appropriated.
4. Assistance to the Independent States (FAA Sec. 498B(j)).
5. Afghanistan (only for loan defaults under section 7012 of the FY 2010 Act or any similar provision of law (i.e., Section 620(q) of the FAA) and Section 660 of the FAA); Iraq, Lebanon; Montenegro; Pakistan; victims of war; displaced children; displaced Burmese; and victims of trafficking in persons and combating trafficking (FY 2010 Act, Sec. 7034).
6. Tropical forestry, biodiversity conservation, clean energy, and climate change programs aimed at reducing greenhouse gas emissions, and programs to mitigate mercury pollution (FY 2010 Act, Sec. 7081(d)).
7. Non-governmental organizations and P.L. 480 (FY 2010 Act, Sec. 7028).
8. Title II Emergency Programs (P.L. 480, Sec. 202(a)).
9. Assistance from all accounts for the promotion of democracy (programs that support good governance, human rights, independent media, and the rule of law, and otherwise strengthen the capacity of democratic political parties, governments, nongovernmental organizations and institutions, and citizens to support the development of democratic states, institutions, and practices that are responsive and accountable to citizens) (FY 2010 Act, Sec 7034 (m)).

10. Title III funds in the FY 2010 Act for food security and agricultural development programs, to address critical food shortages (FY 2010 Act, Development Assistance account heading).

**II. COUNTRY CHECKLIST**

This checklist has the general provisions to be completed for a country.

1. **NARCOTICS CERTIFICATION.** (Section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228) (FRAA), September 30, 2002). As a result of Presidential Determination No. 2009 - 30 ([see http://www.whitehouse.gov/the\\_press\\_office/Presidential-Determination-regarding-major-illicit-drug-transit](http://www.whitehouse.gov/the_press_office/Presidential-Determination-regarding-major-illicit-drug-transit)) the narcotics certification applies only to Bolivia, Burma and Venezuela. Afghanistan, The Bahamas, Bolivia, Brazil, Burma, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, and Venezuela were identified as “major drug transit or major illicit drug producing” countries. Of these the President determined that Burma, Bolivia and Venezuela had “failed demonstrably” during the last 12 months to adhere to international counternarcotic agreements and to take counternarcotic measures set forth in U.S. law. In the cases of Bolivia and Venezuela, the President has issued a national interest waiver so that the U.S. may continue to support specific programs to benefit the Bolivian and Venezuelan people. In Venezuela, funds will continue to support civil society programs and small community development programs. In Bolivia, the waiver will permit continued support for agricultural development, exchange programs, small enterprise development, and police training programs.

<b>Is this applicable? Please comment.</b>
--

2. **INDEBTEDNESS TO U.S. CITIZENS.** (FAA Sec. 620(c)). Absent a Presidential determination based on national security needs, assistance to a government is prohibited if the government is indebted to any U.S. citizen or person for goods or services furnished or ordered, and (a) such citizen or person has exhausted available legal remedies, (b) the debt is not denied or contested, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government (or controlled entity).

<b>Is this applicable? Please comment.</b>
--

3. **SEIZURE OF U.S. PROPERTY.** (Section 527 of the Foreign Relations Authorization Act, 1994-95, which superseded FAA Sec. 620(e)). Absent a waiver by the Department of State, assistance to a government is prohibited if that government

has expropriated or seized ownership or control of property at least 50 percent beneficially owned by U.S. citizens without:

- (a) Returning the property to the owner;
- (b) Compensating the owner for the property;
- (c) Offering a domestic procedure providing prompt, adequate, and effective compensation for the property; or
- (d) Submitting the dispute to international arbitration.

As of January 2010, the only country identified is Nicaragua, which has received a waiver until July, 2010.

<b>Is this applicable? Please comment.</b>
--

4. **SPECIFIC COUNTRIES.** (FAA Secs. 620(a) and 620(f); FY 2010 Act, Sec. 7007). Assistance is specifically prohibited in the FY 2010 Act to Cuba, Iran, North Korea, and Syria. (Note: For FY 2010, the restriction in Sec. 7007 applies only to the governments of the four listed countries.)

<b>Is this applicable? Please comment.</b>
--

5. **LOAN DEFAULT.** (FAA Sec. 620(q); FY 2010 Act, Sec. 7012 [Brooke Amendment]; see ADS 623). Absent a Secretary of State waiver, assistance is prohibited to the country under Section 620(q). Under the Brooke Amendment, absent a Presidential waiver, assistance is prohibited only to the government of the country under section 7012 where:

- (a) The government of the recipient country has been in default for more than six months on interest or principal of any loan by the U.S. to such country under the FAA; or
- (b) The country has been in default for more than one calendar year on interest or principal on any U.S. foreign assistance loan.

The 620q and Brooke Amendment reports can be found on the USAID intranet at <http://inside.usaid.gov/M/CFO>.

[Contact: M/CFO/WFS/Credit Team, William Fuller, 202-712-0566.]

<b>Is this applicable? Please comment.</b>
--

- 6. **DIPLOMATIC RELATIONS WITH U.S.** (FAA Sec. 620(t)). Assistance is prohibited if diplomatic relations between the U.S. and the recipient country are currently severed.

**Is this applicable? Please comment.**

- 7. **INTERNATIONAL TERRORISM.** (FY 2010 Act, Sec. 7022; FAA Secs. 620A, 620G).

Assistance is prohibited to a recipient country if the Secretary of State has determined that the government of that country has repeatedly provided support for international terrorism (section 620A). Cuba, Iran, Sudan, and Syria have been determined to be countries whose governments have repeatedly provided support for acts of international terrorism.

Assistance is prohibited to a recipient government of a country if that government has provided assistance to a country that has repeatedly provided support for international terrorism (section 620G).

Assistance is prohibited to a recipient country if the President has determined it has granted sanctuary from prosecution to any individual or group which has committed an act of international terrorism or otherwise supports international terrorism (section 7022).

The President has authority to waive sections 620A and 7022 for national security interests or (subject to certain exceptions) humanitarian reasons and to waive section 620G for assistance in the national interest.

[Contact: State counterpart desk officer]

**Is this applicable? Please comment.**

- 8. **EXPORT OF LETHAL MILITARY EQUIPMENT TO TERRORIST STATES.** (FY 2010 Act, Sec. 7021; FAA Sec. 620H). Absent a waiver by the Secretary or Deputy Secretary of State on national interest grounds, assistance is prohibited to a government that provides lethal military equipment to a government designated by the Secretary of State as a State Sponsor of Terrorism (those described in 7 above).

[Contact: State counterpart desk officer]

**Is this applicable? Please comment.**

- 9. **DISCRIMINATION.** (FAA Sec. 666(b)). Assistance is prohibited to a recipient country that objects, on the basis of race, religion, national origin, or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA.

**Is this applicable? Please comment.**

- 10. **NUCLEAR TECHNOLOGY.** (Arms Export Control Act Secs. 101, 102).

- (a) Absent special certification by the President, assistance is prohibited if the recipient country has either delivered or received from any other country nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards any time after August 3, 1977.
- (b) Absent special certification by the President, assistance is prohibited if the recipient country has, on or after June 30, 1994:
  - (1) Transferred a nuclear explosive device or components or design information for such a device to a non-nuclear weapon state,
  - (2) Detonated a nuclear explosive device (if the country is a non-nuclear weapon state),
  - (3) Received a nuclear explosive device or components or design information for such a device (if the country is a non-nuclear weapon state), or
  - (4) Exported (or attempted to export) illegally from the U.S. any material, equipment, or technology that would contribute significantly to the ability of a country to manufacture a nuclear explosive device.

[Contact: State counterpart desk officer]

**Is this applicable? Please comment.**

- 11. **MILITARY COUP OR DECREE.** (FY 2010 Act, Sec. 7008). Assistance is prohibited to the government of a country where the duly elected head of government of the recipient country has been deposed by military coup or decree unless the

President has notified Congress that a democratically elected government has since taken office. Since FY 2002, the section does not apply to assistance to promote democratic elections or public participation in democratic processes.

<b>Is this applicable? Please comment.</b>
--

12. **EXPLOITATION OF CHILDREN.** (FAA Sec. 116(b)). Assistance is prohibited where the Department of State has determined that the recipient government has failed to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse, or forced conscription into military or paramilitary services.

<b>Is this applicable? Please comment.</b>
--

13. **PARKING FINES AND REAL PROPERTY TAXES.** (FY 2010 Act, Sec. 7055). Assistance to a recipient country must be reduced by 110 percent of the amount of unpaid parking fines and property taxes owed to the District of Columbia and New York City.

OYB country levels are adjusted by amounts owed by F, as part of the OYB process. **No action required** by country desk.

[Contact: Check with Bureau budget office]

<b>Is this applicable? Please comment.</b>
--

14. **DELIVERY OF HUMANITARIAN ASSISTANCE.** (FAA Sec. 620I). Absent a Presidential determination, assistance is prohibited where the recipient government has prohibited or otherwise restricted, directly or indirectly, the transport or delivery of U.S humanitarian assistance.

<b>Is this applicable? Please comment.</b>
--

15. **ASSISTANCE TO CUBA.** (FAA Sec. 620(y), as amended by section 2810 of FY 98/99 Foreign Relations Authorization Act, P. L. 105-277; LIBERTAD Act Sec. 111; P. L. 104-114).

- (a) If a country (or any entity in the country) provided (1) nuclear fuel and related assistance and credits or (2) assistance or credits in support of the Cuban nuclear facility at Juragua, Cuba at any time after March 12, 1996, then assistance to such country must be reduced by an amount equal to the sum of any such assistance or credits.
- (b) Assistance to a recipient country must be reduced by an amount equal to the aggregate value of nuclear fuel related assistance and credits provided by that country to Cuba during the preceding fiscal year, unless Cuba:
  - (1) Has ratified the Treaty on the Non-Nuclear Proliferation of Nuclear Weapons or the Treaty of Tlatelolco and Cuba is in compliance therewith;
  - (2) Has negotiated and is in compliance with full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such treaty; and
  - (3) Incorporates and is in compliance with internationally accepted nuclear safety standards.

**Is this applicable? Please comment.**

16. **HUMAN RIGHTS VIOLATIONS.** (FAA Secs. 116 and 502B). If the government of a country is determined to have engaged in a consistent pattern of gross violations of internationally recognized human rights, then FAA sections 116 and 502B will be triggered. Section 116 restricts assistance under FAA Part I (Development Assistance, Global Health and Child Survival, Democracy Fund, etc), including Economic Support Fund (ESF) assistance, to that government, unless the assistance will directly benefit the needy. Section 502B restricts ESF (and other security assistance) to the relevant country (there are some available mechanisms for continuing such assistance to the extent consistent with Section 116).

[Contact: State counterpart desk officer]

**Is this applicable? Please comment.**

17. **TRAFFICKING IN PERSONS (TIP).** (22 USC 7107). Is the country listed on Tier 3 of the annual TIP report released each June by the State Department **AND** subject to sanctions under the Presidential Determination for the succeeding fiscal year? For FY 2010, these countries are Cuba, Eritrea, Fiji, Iran and Syria.

Background: The June 2009 TIP Report (Found at [HTTP://WWW.STATE.GOV/G/TIP/RLS/TIPRPT/2009/INDEX.HTM](http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm)) placed 17 countries on Tier 3. The Presidential Determination issued at the beginning of each fiscal year describes: (a) which countries are determined to have come into subsequent compliance with the law and therefore not subject to sanctions; (b) which countries are subject to sanctions; and (c) which countries are subject to full or partial waivers. The Presidential Determination for FY 2009 (No. 2009-5) ([HTTP://WWW.STATE.GOV/G/TIP/RLS/OTHER/2009/129593.HTM](http://www.state.gov/g/tip/rls/other/2009/129593.htm)): applied sanctions to the countries listed above; recognized the Secretary of State's subsequent compliance determinations regarding Swaziland; waived sanctions on Chad, Kuwait, Malaysia, Mauritania, Niger, Papua New Guinea, Saudi Arabia, and Sudan; and partially waived sanctions on Burma and Zimbabwe.

Note: Fifty-two countries, many of them with active USAID programs, were placed on the Special Watch List for FY 2010 by the State Department. Please refer to the traffic in persons interim assessment of each of the Special Watch List countries to be published in January 2010. This interim assessment is intended to serve as a mid-term evaluation, giving foreign governments more time to review, respond and avert the prospect of a Tier III ranking and possible sanctions in the pending annual TIP report released each June. The presidential determination partially waived sanctions on Zimbabwe to allow "funding assistance for trafficking, the promotion of health, good governance, education, agriculture, poverty reduction, livelihoods, or family planning, or which would have a significant adverse effect on vulnerable populations if suspended, would promote the purposes of the Act or is otherwise in the national interest of the United States;" and on Burma to allow funding for programs that "combat infectious disease" or is "otherwise in the national interest of the United States."

[Contact: your RLA or AGC; EGAT/WID, Katherine Blakeslee, 202-712-0570.]

**Is this applicable? Please comment.**

18. **EXTRADITION OF INDIVIDUALS ACCUSED OF KILLING A LAW ENFORCEMENT OFFICER.** (FY 2010 Act, Sec. 7080). Assistance is prohibited to the central government of a country that has refused to extradite to the United States any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole or for killing a law enforcement officer. This restriction applies to central governments with which the United States maintains diplomatic relations and with which the United States has an extradition treaty and the government of that country is in violation of that treaty. The Secretary may waive this restriction, on a case-by-case basis, if it is important to the national interests of the United States.

As of January 2010, the State Department's Office of Legal Adviser is not aware of refusals by the central government of any country that meet the criteria for triggering the application of this restriction, though such cases could arise at any

time and posts are advised to consult with L/LEI (202-647-7324) on any extradition cases of potential concern of which they may be aware.

[Contact: State counterpart desk officer]

<b>Is this applicable? Please comment.</b>
--

19. **TRANSPARENCY AND ACCOUNTABILITY.** (FY 2010 Act, Sec. 7086) Assistance is prohibited to the central government of a country that fails to make publicly available on an annual basis its national budget. The restriction applies to all funds appropriated under the FY 2009 Act. The restriction contains a national interest waiver that may be exercised by the Secretary of State on a country by country basis.

As of January 2010, the State Department is conducting a review to determine the applicability of this restriction and whether a waiver will be required for certain countries. Please contact your RLA or AGC for the latest status.

[Contact: your RLA or AGC]

<b>Is this applicable? Please comment.</b>
--

20. **ENFORCEMENT OF NONPROLIFERATION TREATIES.** (Section 530 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103-236) (FRAA), April 30, 1994) Absent a waiver by the President, assistance under the FAA to a "non-nuclear weapon state" is prohibited if that country has been found to have terminated, abrogated, or materially violated an International Atomic Energy Agency full-scope safeguard agreement, or materially violated a bilateral U.S. nuclear cooperation agreement entered into after March 10, 1978. "Non-nuclear weapon state" means any country which is not a nuclear-weapon state, as defined by Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons (July 1, 1968).

[Contact: State counterpart desk officer]

<b>Is this applicable? Please comment.</b>
--

### III. ACTIVITY CHECKLIST

This checklist is to help managers and teams ensure that activities are consistent with applicable law. Since different provisions apply at different stages of the process, this Checklist is divided into the following parts: (A) Planning, (B) Congressional Notifications, and (C) Obligating Documents.

In addition to completing this Checklist, managers and teams should check with the Desk Officer to make sure that the Country Checklist has been completed and nothing has occurred since completion of the Country Checklist that would affect USAID's ability to provide assistance.

For the most part, no distinction between Development Assistance and Economic Support Fund funds is made in this Activity Checklist because the FAA provides that, to the maximum extent feasible, ESF assistance should be provided consistent with the policy directions, purposes, and programs of Development Assistance.

#### PART A. PLANNING

1. **PEOPLES REPUBLIC OF CHINA.** (FY 2010 Act, Sec. 7071(g)(2)). None of the funds appropriated or otherwise made available pursuant to the FY 2010 Act may be used to finance any grant, contract, or cooperative agreement with the People's Liberation Army (PLA) of the People's Republic of China, or any entity that the Secretary of State has reason to believe is owned or controlled by, or an affiliate of, the PLA.

Is this applicable? Please comment.

2. **ADVERSE ECONOMIC IMPACT UPON THE UNITED STATES.**

(a) **IMPACT ON U.S. JOBS; RELOCATION; EXPORT ZONES; VIOLATION OF WORKERS' RIGHTS.** (FY 2010 Act, Sec. 7029; see ADS 225). Assistance may not be provided:

- (1) To a business located in the U.S. for the purpose of inducing that business to relocate outside the U.S. in a manner that would likely reduce the number of U.S. employees of that business;
- (2) For an activity that contributes to the violation of internationally recognized workers' rights in the recipient country. This is applied commensurate with the level of development of the recipient country and is not to preclude assistance for the informal sector including micro and small-scale enterprise and smallholder agriculture.

Is this applicable? Please comment.

[Empty rectangular box]

- (b) **PRODUCTION OF SURPLUS COMMODITIES.** (FY 2010 Act, Sec. 7026(a)). Assistance may not be provided to establish or expand production of any commodity for export if the commodity is likely to be in surplus on world markets and substantial injury will be caused to U.S. producers of the same, similar, or competing commodities.

Is this applicable? Please comment.

- 3. **AGRICULTURAL ACTIVITIES (BUMPERS AMENDMENT).** (FY 2010 Act, Sec. 7026(b)). No funds may be used for agricultural development activities (specifically, any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training) that would compete with a similar commodity grown or produced in the United States unless the activity:
  - (a) Is designed to increase food security in developing countries and where such activities will not have a significant impact in the export of agricultural commodities of the United States; or
  - (b) Is a research activity intended primarily to benefit American producers.

Is this applicable? Please comment.

- 4. **COMMUNIST ASSISTANCE.** (FAA Sec. 620(h)). Arrangements should be made to ensure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of any country that is a Communist country for purposes of FAA section 620(f).

Is this applicable? Please comment.

- 5. **ENVIRONMENT.**
  - (a) **ENVIRONMENTAL REVIEW.** (FAA Sec. 117; 22 CFR 216 (USAID Regulation 16), *see* ADS 204). 22 CFR 216 requires an Initial Environmental Examination, unless the proposed assistance falls within certain exceptions and other actions. Cognizant Technical Officers remain responsible for ensuring compliance with all 22 CFR 216 requirements.

**Is this applicable? Please comment.**

- (b) **DEBT-FOR-NATURE EXCHANGE.** (FAA Sec. 463). Assistance that will finance a debt-for-nature exchange must:
- (1) Support protection of the world's oceans and atmosphere, animal and plant species, or parks and reserves; or
  - (2) Promote natural resource management, local conservation programs, conservation training programs, public commitment to conservation, land and ecosystem management, or regenerative approaches in farming, forestry, fishing, and watershed management.

**Is this applicable? Please comment.**

- (c) **TROPICAL FOREST DEGRADATION.** (FAA Sec. 118). Funds may not be used for:
- (1) The procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems;
  - (2) Actions that will significantly degrade national parks or similar protected areas that contain tropical forests, or introduce exotic plants or animals into such areas;
  - (3) Activities that would result in the conversion of forest lands to the rearing of livestock;
  - (4) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) that pass through relatively undegraded forest lands;
  - (5) The colonization of forest lands; or
  - (6) The construction of dams or other water control structures that flood relatively undegraded forest lands.

*However, funds may be used for activities in (3) through (6) above if an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural*

poor and will be conducted in an environmentally sound manner that supports sustainable development.

- (d) **BIODIVERSITY.** (FY 2010 Act, Sec. 7081(d)). No funds may be made available, directly or indirectly, to support industrial-scale logging or other industrial-scale resource extraction or sector reform that would promote these activities.

Is this applicable? Please comment.

6. **EXPROPRIATION AND LAND REFORM.** (FAA Sec. 620(g)). Assistance may not be used to finance compensation to owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President.

Is this applicable? Please comment.

7. **FAMILY PLANNING.**

- (a) **ABORTIONS AND INVOLUNTARY STERILIZATIONS PROHIBITED.** (FAA Sec. 104(f); FY 2010 Act, Sec. 7018 and "Global Health and Child Survival" account heading). Funds may not be used:
- (1) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.\*
  - (2) To pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations.
  - (3) To pay for any biomedical research that relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.
  - (4) To furnish assistance to any country or organization if the President certifies that the use of these funds by such country or organization would violate the three provisions set forth above in (a)(1)-(3).
  - (5) To lobby for or against abortion.
  - (6) To furnish assistance to any organization or program that, as determined by the President of the United States, supports or

participates in the management of a program of coercive abortion or involuntary sterilization.

\* For purposes of the FY 2010 Act or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

<b>Is this applicable? Please comment.</b>
--

(b) **VOLUNTARY FAMILY PLANNING SUPPORT.** (FY 2010 Act, "Global Health and Child Survival" account heading). Funds may be made available only to voluntary family planning projects that:

- (1) Offer, either directly or through referral to, or provide information about access to, a broad range of family planning methods and services.
- (2) Meet the following requirements:
  - (a) Service providers or referral agents in the project do not implement or are not subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (quantitative estimates or indicators for planning and budgeting purposes are acceptable);
  - (b) The project must not provide payment of incentives, bribes, gratuities, or financial rewards to an individual in exchange for becoming a family planning acceptor or to program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning;
  - (c) The project must not deny any right or benefit, including right of access to participate in any program of general welfare or right of access to health care, as a consequence of any individual's decision not to accept family planning services;
  - (d) The project must provide family planning acceptors comprehensible information of the health benefits and risks of method chosen; and
  - (e) The project must ensure that experimental contraceptive drugs and devices and medical procedures are provided

only in the context of scientific study in which participants are advised of potential risks and benefits.

- (3) In awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant may be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and additionally, all such applicants must comply with the requirements set forth above under (b)(1).

**Is this applicable? Please comment.**

**8. HIV/AIDS.**

- (a) **MEDICALLY ACCURATE INFORMATION ON CONDOMS.** (FY 2010 Act, "Global Health and Child Survival" account heading). Information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated under the FY 2010 Act shall be medically accurate.\* Such information must be consistent with USAID's fact sheet entitled, "USAID: HIV/STI Prevention and Condoms, which may be accessed at:  
[http://www.usaid.gov/our\\_work/global\\_health/aids/TechAreas/prevention/condomfactsheet.html](http://www.usaid.gov/our_work/global_health/aids/TechAreas/prevention/condomfactsheet.html).

\* Note: An identical requirement has been included in all appropriations acts since FY 2004.

**Is this applicable? Please comment.**

- (b) **CONSCIENCE CLAUSE.** (Section 301(d) of the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (P.L. 108-25) (Leadership Act)). An organization, including a faith-based organization, that is otherwise eligible to receive FY 2009 - FY 2013 funds for HIV/AIDS prevention, treatment, or care

- (1) shall not be required, as a condition of receiving the assistance-
- a. to endorse or utilize a multisectoral (i.e., ABC) or comprehensive approach to combating HIV/AIDS,
  - b. to endorse, utilize, make a referral to, become integrated with or otherwise participate in any program or activity to which the organization has a religious or moral objection; and,
- (2) shall not be discriminated against in the solicitation or issuance of grants, contracts, or cooperative agreements under such provisions of law for refusing to meet any requirement described in paragraph (1).

Is this applicable? Please comment.

- (c) **PROSTITUTION AND SEX TRAFFICKING – LIMITATION ON USE OF FUNDS.**  
(Leadership Act, Section 301(e)). FY 2009 - FY 2013 funds for HIV/AIDS activities may not be used to promote or advocate the legalization or practice of prostitution or sex trafficking. This prohibition does not restrict the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides.

Is this applicable? Please comment.

- (d) **PROSTITUTION AND SEX TRAFFICKING – ORGANIZATIONAL ELIGIBILITY.**  
(Leadership Act, Section 301(f); FY 2004 Act, Sec. 595 and Statement of Managers). Any NGO or PIO receiving FY 2009 - FY 2013 funds for HIV/AIDS activities must have a policy explicitly opposing prostitution and sex trafficking.\* The following organizations are statutorily exempt from this requirement: the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization (including WHO's six regional offices: The Americas (PAHO), South-East Asia (SEARO), Africa (AFRO), East Mediterranean (EMRO), Europe (EURO), and Western Pacific (WPRO)); the International AIDS Vaccine Initiative; and any "United Nations agency".

\* Note: This requirement is the subject of ongoing litigation. USAID is enjoined from enforcing this requirement against certain organizations. Please contact your cognizant RLA or GC/EGAT&GH if you have any questions regarding application of this requirement.

Is this applicable? Please comment.

9. **ANTI-TRAFFICKING IN PERSONS.**

- (a) **LIMITATION ON USE OF FUNDS.** (Trafficking Victims Protection Act of 2000, as amended (TVPA), Section 113(g)(1)). No funds made available to carry out the TVPA (i.e., to combat human trafficking), regardless of the

year of funding, may be used to promote, support, or advocate the legalization or practice of prostitution. This prohibition does not restrict assistance designed to promote the purposes of the TVPA by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked. See AAPD 07-03,\* “Anti-Trafficking Activities--Limitation on Use of Funds; Restriction on Organizations Promoting, Supporting, or Advocating Prostitution.”

\* Note: AAPD 07-03 replaces AAPD 04-09 and supplements AAPD 04-16.

**Is this applicable (i.e, is the purpose of the activity to combat trafficking in persons)? Please comment.**

**(b) ORGANIZATION RESTRICTION.** (Trafficking Victims Protection Act of 2000, as amended (TVPA), Section 113(g)(2)). No funds made available to carry out the TVPA (i.e., to combat human trafficking), regardless of the year of funding, may be used to implement any program that targets victims of severe forms of trafficking in persons as defined in Section 103(8)(A) of the TVPA through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution. This prohibition does not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked. See AAPD 07-03,\* “Anti-Trafficking Activities--Limitation on Use of Funds; Restriction on Organizations Promoting, Supporting, or Advocating Prostitution.”

\*Note that AAPD 07-03 replaces AAPD 04-09 and supplements AAPD 04-16.

**Is this applicable (i.e., does any part of the activity target victims of severe forms of trafficking)? Please comment.**

- 10. INTERNATIONAL CONFERENCES.** (FY 2010 Act, Sec. 7048), see Guidance on Funding Foreign Government Delegations to International Conferences, Mandatory Reference to ADS 302, 303, 306, 308, 350, and 522). Funds made available to carry out Chapter 1 of Part I of the FAA (e.g. CSH, DA) may not be used to pay the costs for participation of another country’s delegation at international conferences held under the auspices of multilateral or international organizations.

**Is this applicable? Please comment.**

11. **LEGISLATIVE ACTION.** (FAA Sec. 611(a)(2)). If the obligation is more than \$500,000 and requires legislative action within the recipient country, there must be a basis for a reasonable expectation that such action will be completed in time to permit orderly accomplishment of the purpose of the assistance.

**Is this applicable? Please comment.**

12. **LOANS.**

(a) (FAA Section 122(b)). In making loans, USAID must consider the following:

- (1) Information and conclusion on the capacity of the country to repay the loan at a reasonable rate of interest.
- (2) Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities?
- (3) If repayable in dollars, the interest rate must be at least 2 percent per annum during a grace period which is not to exceed 10 years, and at least 3 percent per annum thereafter, but no higher than the applicable legal rate of interest of the country in which the loan is being made.

**Is this applicable? Please comment.**

(b) **PRODUCTIVE ENTERPRISES COMPETING WITH U.S. ENTERPRISES.** (FAA Sec. 620(d)). No FAA loan funds may be used for any productive enterprise that will compete with U.S. enterprises, unless:

- (1) There is an agreement by the recipient country to prevent export for use or consumption in the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan; or
- (2) If in the absence of such an agreement, the President has established import controls to effectuate that agreement.

This may also be waived by the President due to national security interests.

Is this applicable? Please comment.

13. **MILITARY PURPOSES.** (FAA Sec. 531(e)). Congress has explicitly provided that ESF funds may not be used for military or paramilitary purposes (e.g., combat training programs and exercises or support for the military).

Is this applicable? Please comment.

14. **POLICE AND PRISONS.** (FAA Sec. 660). Assistance may not be used to provide training, advice, or any financial support for police, prisons, or other law enforcement forces (see exceptions, including those in sections 660, 119 and 534 of the FAA; Section 536 of the FY 2004 Act (permanent provision of law); subsection (d) under the "Democracy Fund" heading, Sections 7034(a) (only with regard to Afghanistan), 7034(e) (extends FAA 660(b)(6) to regional activities), 7047(a) (community-based police assistance), and 7085 (prison conditions) of the FY 2010 Act).

Is this applicable? Please comment.

15. **PUBLICITY, PROPAGANDA, AND LOBBYING.** (FY 2010 Act, Sec. 7057; Anti-Lobbying Act, 18 U.S.C. 1913). Assistance may not be used, intended, or designed to influence a Member of Congress, a jurisdiction or any official of any government in the United States, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation; to influence in any way the outcome of a political election in the United States; or for any publicity or propaganda purposes not authorized by Congress.<sup>1</sup> There are some exceptions to this general rule; please consult your AGC or RLA.

Is this applicable? Please comment.

16. **SECURITY FORCES.** (FAA Sec. 620J). Assistance may not be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights. See State Cable 34981 (January 2003) and the State Department Leahy Amendment compliance guide found at

<sup>1</sup> See also GC Memorandum dated 5/9/97 by Jan Miller discussing OMB Circular A-122 restrictions regarding lobbying and other advocacy activities.

<http://esoccr.irm.state.gov/Leahy/LeahyGuide.htm>. "Security forces" are understood to be members of the law enforcement community or the military. Prison guards, customs police, border police, and tax police would be examples of persons included in the category of "security forces." State Department implementation guidance requires that the Post and Washington vet security force units or individuals prior to the provision of FOAA-funded training or assistance.

**Is this applicable? Please comment.**

17. **HUMANITARIAN ASSISTANCE CODE OF CONDUCT.** (Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13) Sec. 2110). International Disaster and Famine Assistance, and Transition Initiatives funds may not be obligated directly by USAID in an assistance agreement or an acquisition agreement with any organization that fails to adopt a code of conduct that provides for the protection of beneficiaries of assistance from sexual exploitation and abuse in humanitarian relief operations.

**Is this applicable? Please comment.**

18. **FOREIGN ASSETS CONTROL REGULATIONS.** Is assistance being provided or a payment being made to a national of a country subject to trade and economic sanctions administered by the Office of Foreign Assets Control (OFAC) of the Department of Treasury or to any individual or entity subject to targeted trade and economic sanctions administered by OFAC? See OFAC website: <http://www.ustreas.gov/offices/enforcement/ofac/>. If so, has a license been issued to USAID by OFAC?

[Contact: GC/DCHA, Gary Winter, 202-712-1548.]

**Is this applicable? Please comment.**

19. **TOBACCO.** (FY 2010 Act, Section 7082) Funds made available in the FY 2010 Act may not be used to "promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type."

**Is this applicable? Please comment.**

- 20. **PRIOR APPROVAL BY HOST GOVERNMENT.** (FY 2010 Act, Sec 7034(m)(4)). Democracy, human rights, and governance activities of non-governmental organizations shall not be subject to prior approval by the host government.

Is this applicable? Please comment.

- 21. **ACORN.** (Consolidated Appropriations Act, 2010, P.L. 111-117, div. E, title V, sec. 511 (December 16, 2009)). None of the funds made available in this division or any other division in this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. ~~This requirement is not currently enforceable as per a March 10, 2010 court order in Association of Community Organizations for Reform Now (ACORN), et al. v. United States, et al., 09-CV-4888 (E.D.N.Y). Because of a potential appeal by the U.S. Department of Justice, an update to this Checklist will be issued if the court order is lifted.~~ **The United States Court of Appeals for the Second Circuit granted the Government's motion for stay pending appeal of the district's court's decision enjoining enforcement of various ACORN-related appropriation provisions. Consequently, this provision is once again applicable to USAID activities until further notice.**

Is this applicable? Please comment.

**PART B. CONGRESSIONAL NOTIFICATIONS**

- 1. **GENERAL NOTIFICATION.** (FY 2010 Act, Sec. 7015; FAA Sec. 634A). Obligations must be notified to Congress. This is traditionally accomplished through the annual Congressional Presentation. Post FAA 653(a) country reports will provide a second opportunity to notify activities after 653(a) levels have been negotiated with Congress, and may also be a vehicle to meet Special Notification requirements. Additionally, a new Congressional Notification must be made 15 days in advance of the obligation if the amount of the obligation has increased 10 percent from that previously notified.

Is this applicable? Please comment.

- 2. **SPECIAL NOTIFICATION.** For activities, countries, and other actions requiring special notification see the Annex, "Changes Made by the FY 2010 Department of State, Foreign Operations, and Related Programs Appropriations Act to Current Law."

Is this applicable? Please comment.

**PART C. OBLIGATING DOCUMENTS**

1. **SOURCE, ORIGIN, AND NATIONALITY.** (See ADS 310).

- (a) **GENERAL.** (FAA Sec. 604(a)). All procurement must be from the U.S., the recipient country or developing countries, except as otherwise determined in accordance with Agency rules, including the DFA Procurement Guidance. If planning procurement elsewhere, a waiver must be obtained.

Is this applicable? Please comment.

- (b) **AUTOMOBILES – BUY ONLY U.S. MADE MOTOR VEHICLES.** (FAA Sec. 636(i)). Assistance may not be used to finance the purchase, sale, long-term lease, exchange, or guaranty of the sale of motor vehicles manufactured outside the U.S., unless a waiver is obtained.

Is this applicable? Please comment.

- (c) **AGRICULTURAL PROCUREMENT.** (FAA Sec. 604(e)). Agricultural commodities and products thereof must be procured within the U.S. unless the commodity or product could not be reasonably produced in the U.S. in fulfillment of the particular assistance program. Waivers are available in some circumstances.

Is this applicable? Please comment.

- (d) **CONSTRUCTION OR ENGINEERING SERVICES.** (FAA Sec. 604(g)). No engineering or construction services may be procured from advanced

developing countries<sup>2</sup> eligible under Code 941 that have attained competitive capability in international markets, *unless*:

- (1) The advanced developing country is receiving direct economic assistance under the FAA, and
- (2) Its own assistance program would permit U.S. firms to compete for similar services.

**Is this applicable? Please comment.**

2. **CASH TRANSFERS – REQUIREMENT FOR SEPARATE ACCOUNT.** (FY 2010 Act, Sec. 7027(b)). If assistance is in the form of a cash transfer or nonproject sector assistance, all such cash payments must be maintained by the country in a separate account and not commingled with any other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance).

**Is this applicable? Please comment.**

3. **CAPITAL ASSISTANCE.**

- (a) **MISSION DIRECTOR CERTIFICATION/ASSISTANT ADMINISTRATOR DETERMINATION.** (FAA Sec. 611(e)). When capital assistance is proposed (for example, construction), and total U.S. assistance for it will exceed \$1 million, the Mission Director must certify and the Regional Assistant Administrator must take into consideration the country's capability to maintain and utilize the assistance effectively.

**Is this applicable? Please comment.**

- (b) **DEVELOPMENTALLY SOUND PROJECTS.** (Jobs Through Export Act of 1992, Sections 303 and 306(b)), P. L. 102-549, 22 U.S.C. 2421b and 2421d(b). If assistance is being provided for a capital activity, the activity must be developmentally sound and measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level.

<sup>2</sup> While GC has not formally defined the term "advanced developing countries," GC has considered both World Bank and OECD/DAC definitions of that phrase. Any questions should be brought to the relevant regional AGC.

**Is this applicable? Please comment.**

- (c) **U.S. ENGINEERING SERVICES.** (FAA Sec. 601(d)). If using capital (for example, construction) assistance, U.S. engineering and professional services must be used to the maximum extent, consistent with U.S. interests.

**Is this applicable? Please comment.**

**4. ASSISTANCE GENERATING LOCAL CURRENCY.** (FY 2010 Act, Sec. 7027(a)). If assistance is furnished to a foreign government under arrangements that result in the generation of local currencies, then:

- (a) USAID must:
  - (1) Require that local currencies be deposited in a separate account established by the recipient government;
  - (2) Enter into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized; and
  - (3) Establish by agreement the responsibilities of USAID and the host government to monitor and account for deposits into and disbursements from the separate account.
- (b) Local currencies, or an equivalent amount of local currencies, can be used only to carry out the purposes of the Development Assistance or Economic Support Fund chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government.
- (c) USAID should take all necessary steps to ensure that the equivalent of local currencies disbursed from the separate account is used for the agreed purposes.
- (d) If assistance is terminated to a country, unencumbered balances of funds remaining in a separate account should be disposed of for purposes agreed to by the recipient government and the United States Government.

**Is this applicable? Please comment.**

5. **ALCOHOLIC BEVERAGES AND CERTAIN ENTERTAINMENT EXPENSES.** (FY 2010 Act, Sec. 7020). Global Health and Child Survival, Development Assistance, or Economic Support Funds may not be used for alcoholic beverages or entertainment expenses that are substantially of a recreational nature.

**Is this applicable? Please comment.**

6. **STATE DEPARTMENT NOTIFICATION OF BILATERAL AGREEMENTS WITH AN OBLIGATION OF \$25 MILLION OR MORE.** (see ADS 349 and Circular 175). The date of signing and the amount involved must be cabled to State's Office of Assistant Legal Adviser for Treaty Affairs (L/T) immediately upon signing and the full text of the agreement should be pouched to State/L/T within 20 days of signing.

**Is this applicable? Please comment.**

7. **ENGINEERING AND FINANCIAL PLANS.** (FAA Sec. 611). Before an obligation of more than \$500,000, there must be:
- (a) Engineering, financial, or other plans necessary to carry out the assistance; and
  - (b) A reasonably firm estimate of the cost to the U.S. of the assistance.

And, if the plan relates to a water or water-related land resource construction, the plan should include a computation of benefits and costs. This figure must be computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.).

**Is this applicable? Please comment.**