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# ADS Chapter 350

## Grants to Foreign Governments

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## ADS 350 – Grants to Foreign Governments

### 350.1 OVERVIEW

Effective Date: 05/05/2003

This chapter establishes standard provisions and other requirements for grants to foreign governments. This chapter does not apply to grants to public international organizations or P.L. 480 agreements.

### 350.2 PRIMARY RESPONSIBILITIES

Effective Date: 05/05/2003

- a. Within their delegated authorities (see [ADS 103](#)), **Bureaus and other Operating Units** are responsible for preparing, negotiating, signing, and implementing bilateral grants in furtherance of their strategic plans and management contracts and for approving substantive exceptions.
- b. The **Bureau for Program and Policy Coordination (PPC)** is responsible for establishing Agency policy for bilateral grants.
- c. The **Office of General Counsel (GC) and Regional Legal Advisers (RLAs)** are responsible for providing guidance on the legal and policy effects of grant provisions; assisting Operating Units in drafting and negotiating, interpreting, and implementing bilateral grants agreements; and approving non-substantive exceptions.

### 350.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

#### 350.3.1 Strategic Objective Grant Agreement (SOAG)

Effective Date: 05/05/2003

The Strategic Objective Grant Agreement (SOAG) is the principal bilateral grant agreement used by USAID. A bilateral grant is a grant by USAID to a foreign government or a subdivision of it. A SOAG is composed of the Principal Text; Annex 1, Amplified Description; and Annex 2, Standard Provisions. See a sample agreement in the [SOAG](#).

#### 350.3.1.1 SOAG Principal Text – Substantive Requirements

Effective Date: 05/05/2003

Except as provided below or unless there is an exception, the Principal Text must address in substance the following (see [SOAG](#)):

- a. **Article 2: Strategic Objective and Results.**
  - (1) **Strategic Objective.** The Principal Text must describe the Strategic Objective.

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**(2) Results.** The Principal Text or Annex 1 must describe the significant Results and indicators. If the Principal Text contains Results, there must be a provision on how the Results can be amended; for example, by formal amendment of the SOAG or by Implementation Letter.

**(3) Annex 1, Amplified Description.** The Principal Text must provide that Annex 1 amplifies the Strategic Objective or Strategic Objective and Results. The Principle Text must state whether Annex 1 can be amended without formal amendment of the SOAG and any limitations on such amendments; that is, Annex 1 amendments must be within the SOAG description of the Strategic Objective or the Strategic Objective and Results.

**b. Article 3: Contributions of the Parties.**

**(1) Section 3.1(a), USAID Contribution.** The Principal Text must state the amount being granted. For example, USAID hereby grants to the Grantee under the terms of this Agreement not to exceed \$\_\_\_\_\_ (the "Grant").

**(2) Section 3.1(b), Incremental Funding.** Any statement on future funding increments by USAID must be made subject to the availability of funds to USAID for that purpose and the mutual agreement of the Parties, at the time of each subsequent increment, to proceed.

**(3) Section 3.1(c), Unilateral Deobligation.** This provision implements reprogramming requirements for deobligation of excess pipeline. It reserves to USAID the unilateral right to reduce the Grant if the amount of the Grant is more than can reasonably be committed for achieving the Objective during the current or next fiscal year. In order that any deobligation not change the scope of the SOAG or USAID's intent to ultimately obligate the full amount originally anticipated, before proceeding the Principal Text must contain a provision stating that any reduction does not reduce USAID's total estimated contribution in section 3.1(b) or, if not incrementally funded, in section 3.1(a), subject to the availability of funds to USAID for this purpose and the mutual agreement of the Parties, at the time of each subsequent increment.

**(4) Section 3.2, Grantee Contribution.** The Grantee's total estimated contribution must be stated. See USAID Exchange Rate Policy Guidance for exchange rate guidance. However, section 2.41 of the Exchange Rate Policy Guidance is superseded by this paragraph in that the Grantee's contribution and the host government contribution can be stated in local currency units. The exchange rate(s) used must be stated in the agreement. See **350.3.4** for requirements on the host government minimum 25 percent contribution. There must be a provision for the

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Grantee to report on its contribution at least annually in a format to be agreed upon with USAID.

**c. Article 4: Completion Date.**

(1) The Principal Text must state a specific Completion Date; that is, the date by which the parties estimate that all activities necessary to achieve the Results will be completed. The Principal Text may provide for the right of the Parties to agree to change the Completion Date before or after the initial Completion Date.

(2) The Principal Text must provide that, except as USAID may otherwise agree in writing, USAID will not issue or approve any disbursement documentation resulting in a disbursement for goods or services furnished after the Completion Date.

(3) The Principal Text must provide that requests for disbursement must be provided by the Grantee no later than nine months after the Completion Date, or such other period as USAID may agree in writing, and, that after such period, USAID may give notice and reduce the amount of the Grant by all or part of the amount for which requests for disbursement were not timely received.

**d. Article 5: Conditions Precedent to Disbursement.**

If there are conditions precedent to initial or additional disbursement, the Principal Text must provide for the following:

(1) Conditions precedent to be met in a form and substance satisfactory to USAID.

(2) Terminal dates for satisfaction of any conditions precedent. The Principal Text may provide that USAID may agree to later terminal dates before or after the terminal dates.

(3) The right of USAID to terminate the SOAG if the conditions precedent to first disbursement are not met by the terminal date.

(4) The right of USAID to cancel the undisbursed balance of the Grant, to the extent not irrevocably committed to third parties, and to terminate the SOAG if the conditions precedent to additional disbursement are not met by the terminal date.

**e. Article 6: Special Covenants.** This article must contain any special covenants specified in the management contract or otherwise determined to be

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required. The covenants, including responsibilities and any deadlines, must be clearly stated.

**f. Article 7: Miscellaneous.**

**(1) Section 7.1. Communications.** There must be a provision designating addresses for communications and providing that delivery to the designated address constitutes delivery to the Party.

**(2) Section 7.2. Representatives.** There must be a provision

**(a)** Designating the representatives of the Parties for taking actions under the SOAG;

**(b)** Providing for the designation of additional representatives and the limitations, if any, on the authority of additional representatives. For example, additional representatives can amend Annex 1 but not amend the definition of the Strategic Objective; and

**(c)** Requiring the Grantee to furnish the names and specimen signatures of its representatives.

**(3) Section 7.3. Standard Provisions Annex.** The Agreement must contain a provision providing that the Standard Provisions Annex forms part of the SOAG.

**(4) Section 7.4. Language of Agreement.** If there is a foreign language version to be signed by the Parties, there must be a provision that provides that the English language version controls in the event of ambiguity or conflict.

**g. Signatures and Dates.** The SOAG must be signed by the Parties and dated.

**350.3.1.2 SOAG Annex 1 – Amplified Description**

Effective Date: 05/05/2003

Except as provided below or unless there is a deviation, the Amplified Description or the Principal Text must address in substance the following:

- a.** An explanation of the problem(s) being addressed at the macro, sectoral, or sub-sectoral level.
- b.** Financial plan or budget, including the Grantee's contribution.

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- c. Results to be achieved and the means for measuring results; for example, indicators, targets, and performance guidelines.
- d. The specific activities to be financed. Or in cases where the actual activities to be financed are not identified and approved by USAID until after the SOAG is signed, the objective criteria and procedures for USAID approval of actual activities. The criteria and procedures must be based on technical and financial planning which includes illustrative activities with indicative funding levels.
- e. Roles and responsibilities of the parties, including measures to be taken to involve customers and, where applicable, other partners.
- f. Monitoring and evaluation.

### **350.3.1.3 SOAG Annex 2 - Standard Provisions**

Effective Date: 05/05/2003

Except as provided below or unless there is an exception, the text of following standard provisions is mandatory (the actual text is in the model [SOAG](#)):

- a. **Article A:**
  - (1) **Section A.1. Definitions.**
  - (2) **Section A.2. Implementation Letters.**
- b. **Article B: General Covenants.**
  - (1) **Section B.1. Consultation.**
  - (2) **Section B.2. Execution of Agreement.**
  - (3) **Section B.3. Utilization of Goods and Services.**
  - (4) **Section B.4. Taxation.** This clause reflects the "majority practice" under USAID Economic Bilateral Agreements or U.S. Post tax arrangements under the leadership of the U.S. Embassy. It clarifies and adds specificity to the "majority practice" and to the clause previously used under the "Project Agreement" format. If the specific "Post practice" provides more in the way of exemptions than Section B.4, the Operating Unit must attempt to negotiate a provision incorporating those exemptions in the SOAG. If, on the other hand, the "Post practice" confers less and the Operating Unit cannot negotiate or is not permitted to negotiate the additional exemptions in Section B.4., the head of the Operating Unit may approve an alternate clause that reflects "Post practice." In such a case,

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the Operating Unit must record the reasons for the alternate clause and inform USAID/W on the feasibility of reopening negotiations on this issue.

**(5) Section B.5. Reports and Information, Agreement Books and Records, Audits, and Inspections.** The clause provides that "Agreement books and records" be kept in accordance with generally accepted accounting principles prevailing in the United States. Operating Units are authorized to modify the clause or issue an Implementation Letter to provide for international, local, or other accounting principles. See ADS [591.3.4.2](#) for general audit requirements.

**(6) Section B.6. Completeness of Information.**

**(7) Section B.7. Other Payments.**

**(8) Section B.8. Information and Marking.**

**c. Article C: Procurement Provisions.**

**(1) Section C.1. Source and Origin.**

**(2) Section C.2. Eligibility Date.**

**(3) Section C.3. Plans, Specifications, and Contracts.**

**(4) Section C.4. Reasonable Price.**

**(5) Section C.5. Notification to Potential Suppliers.**

**(6) Section C.6. Shipping.**

**(7) Section C.7. Insurance.**

**(8) Section C.8. U.S. Government-Owned Excess Property.**

**d. Article D: Disbursements.**

**(1) Sections D.1, D.2, and D.3 are not mandatory.** It is not mandatory to set forth specific types of disbursements in Annex 2; this provision may provide that disbursements will be those agreed to by the Parties in writing, for example, in an Implementation Letter or Annex 1.

**(2) Section D.4. Rate of Exchange.**

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- e. **Article E: Termination; Remedies.**
  - (1) **Section E.1. Suspension and Termination.**
  - (2) **Section E.2. Refunds.**
  - (3) **Section E.3. Nonwaiver of Remedies.**
  - (4) **Section E.4. Assignment.**
- f. **Section F.1. Investment Promotion.** See [ADS 225](#).
- g. **Section F.2. Bilateral Population Activities.** If the SOAG will finance population activities, the Operating Unit is required to insert the language set forth in Section F.2 in the agreement and implementation letter. If it is necessary to consider substantive alternative language, the Operating Unit must consult the cognizant RLA or GC in Washington.
- h. **Section F.3. Prohibition on Assistance to Drug Traffickers.** See [ADS 206](#) to determine if the clauses in 206.3.12 are required.
- i. **Section F.4. Workers' Rights.** See [ADS 225](#).

### **350.3.2 Limited Scope Grant Agreement (LSGA)**

Effective Date: 05/05/2003

Operating Units are authorized to use a Limited Scope Grant Agreement (LSGA) for funding less complex activities or where the Grantee has a distinct and limited role that does not require the detailed description of the Grantee's responsibilities found in a SOAG. For example, an LSGA may be used to fund a specific activity or result of limited scope, duration, or funding or for a more complex activity for which primary implementation responsibility is vested in an entity other than the Grantee.

An LSGA is composed of the Title Page; Annex 1, Standard Provisions; and an optional Annex 2, Activity Description. See a sample agreement in [LSGA](#).

#### **350.3.2.1 LSGA Title Page and Optional Annex 2 – Activity Description**

Effective Date: 05/05/2003

Except as provided below or unless there is an exception, the Title Page or Activity Description Annex must contain or substantively address the following (see [LSGA](#)):

- a. **Activity Title and USAID Activity Number.**
- b. **Description of the Results or Activity.**

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**c. Purpose.** A statement to the effect that USAID and the Grantee agree to carry out the Activity described in the Agreement in accordance with (a) the terms of the Agreement and (b) either any general agreement between the two governments regarding economic or technical cooperation or the title of the specific general agreement.

**d. USAID Contribution.**

**(1)** A statement as to the authority for the grant and the amount being granted. For example, "USAID, as authorized by the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee U.S.\$ \_\_\_\_\_ (the "Grant") to be expended as described in this Agreement."

**(2) Incremental Funding.** If the LSGA is to be incrementally funded, before proceeding, future funding increments by USAID must be made subject to

**(a)** The availability of funds to USAID for that purpose; and

**(b)** The mutual agreement of the Parties at the time of each subsequent increment.

**e. Grantee Contribution.** The Grantee's total estimated contribution must be stated. See USAID Exchange Rate Policy Guidance for exchange rate guidance. However, section 2.41 of the Exchange Rate Policy Guidance is superseded by this paragraph in that the Grantee's contribution and the host government contribution can be stated in local currency units. The exchange rate(s) used must be stated in the agreement. See **350.3.4** for requirements on the host government minimum 25 percent contribution. There must be a provision for the Grantee to report on its contribution at least annually in a format to be agreed upon with USAID.

**f. Completion Date.**

**g. Contents.** A statement as to what constitutes the LSGA. For example, "This Agreement consists of (a) this Title Page, (b) Annex 1, Standard Provisions Annex, and (c) Annex 2, Activity Description."

**h. Addresses** (optional).

**i. Signatures and Dates.** The LSGA must be signed by the parties and dated.

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**350.3.2.2 LSGA Annex 1 - Standard Provisions**

Effective Date: 05/05/2003

Except as provided below or unless there is an exception, the text of following standard provisions is mandatory (the actual text is in the model [LSGA](#)).

- a. **Article A: Definitions.**
- b. **Article B: Implementation Letters.**
- c. **Article C: USAID Contribution.**
- d. **Article D: Grantee Contribution.**
- e. **Article E: Completion Date.**
- f. **Article F: Utilization of Goods and Services.**
- g. **Article G: Taxation.** For guidance on the use of this clause, see **350.3.1.3**.
- h. **Article H: Reports and Information, Agreement Books and Records, Audits, and Inspections.** For guidance on the use of this clause, see **350.3.1.3**.
- i. **Article I: Other Payments.**
- j. **Article J: Information and Marking.**
- k. **Article K: Rate of Exchange.**
- l. **Article L: Procurement of Goods and Services.**
- m. **Article M: Suspension, Termination, and Other Remedies.**
- n. **Article N: Investment Promotion.** See [ADS 225](#).
- o. **Article O: Language of Agreement.** Mandatory only when there is a foreign language version that will be signed by the Parties.
- p. **Article P: Bilateral Populating Activities.** If the LSGA will finance population activities, the Operating Unit is required to insert the language set forth in Article O in the agreement and implementation letter. If it is necessary to consider substantive alternative language, the Operating Unit must consult with the cognizant RLA or GC in Washington.

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q. **Article Q: Prohibition on Assistance to Drug Traffickers.** See [ADS 206](#) to determine if the clauses in 206.3.12 are required.

r. **Article R: Workers' Rights.** See [ADS 225](#)

### **350.3.3 Other Bilateral Grant Agreements**

Effective Date: 05/05/2003

Operating units are authorized to use other types of bilateral agreements subject to the clearance of an RLA or Assistant General Counsel Office (AGC), for example, non-project assistance grant agreements for cash transfers, sector program assistance, or commodity import programs.

### **350.3.4 Non-Project Assistance Agreements**

#### **350.3.4.1 Interest Earnings**

Effective Date: 05/05/2003

This supersedes 94 State 205189 and applies to cash and sector assistance grants, except for those to Israel or Poland. Such grant agreements must contain the following language:

The (host country) agrees that any interest earned on funds in the special account must be returned to the United States. Alternatively, the parties may agree on a method of direct disbursement of grant proceeds by the United States in payment of certain debt or other obligations of the (host country). USAID will issue a program implementation letter to provide instructions on effecting payment to the United States of any interest earned or on the alternative direct disbursement method.

Substantive exceptions must be based on a compelling foreign policy justification and approved by the cognizant regional Bureau and the Assistant Administrators for the Bureau for Policy and Program Coordination (PPC) and Bureau for Management (M).

#### **350.3.4.2 Third Party Authorizations**

Effective Date: 05/05/2003

This supersedes 2003 STATE 020049 and applies only to cash transfer agreements, not to other forms of non-project assistance. Before award of a cash transfer agreement, the designated program office will conduct and document an analysis to assess the Grantee's ability to comply with the agreement's requirements in the agreement. The designated program office must submit to the program office chief's immediate supervisor for approval a decision memo summarizing the findings of this assessment and recommendation on the need for third party authorizations (for example, from Grantee's creditors) that may be necessary to monitor the grant award. This written analysis should take into account the following:

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- a. The purpose (balance of payments support, debt buy-down, etc.) and structure (direct payment to creditors, direct transfer to central government bank account, etc.) of the cash transfer;
- b. The existence, or lack thereof, of adequate provisions for auditing the agreement by USAID's Office of the Inspector General or other U.S. Government auditors;
- c. The Grantee's prior history, or lack thereof, with USAID cash transfer grant agreements; and
- d. The political context and U.S. foreign policy considerations.

If the decision is that third party authorizations are necessary, the Operating Unit must incorporate a requirement for third party authorizations into the grant agreement, program implementation letter, or other appropriate documentation that requires the Grantee to

- a. Issue third party authorization letter(s) to the appropriate institution(s) authorizing USAID access to information essential to monitoring the terms of the grant agreement; and
- b. Provide USAID with copies of the authorization letters.

#### **350.3.4.3 Reporting on Implementation**

Effective Date: 05/05/2003

This supersedes 2003 STATE 020049 and applies only to cash transfer agreements, not to other forms of non-project assistance. Given the political sensitivity of cash transfers, the Operating Unit will, over the life of the agreement, report quarterly to senior Mission and Bureau management on grant implementation. The report must identify issues and proposed resolutions on grant monitoring and compliance with grant requirements.

#### **350.3.5 Host Government Minimum 25 Percent Contribution**

Effective Date: 05/05/2003

This implements section 110 of the Foreign Assistance Act of 1961, as amended, (FAA) which states

No assistance shall be furnished by the United States Government to a country under Sections 103 through 106 of this Act until the country provides assurance to the President, and the President is satisfied, that such country will provide at least 25 per centum of the costs of the entire program, project, or activity with respect to which such assistance is to be furnished, except that such costs borne by such country may be provided on an "in-kind" basis.

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**350.3.5.1 Assistance Covered by Section 110**

Effective Date: 05/05/2003

FAA section 110 only applies if it meets the following requirements:

**a. Source of Funding.** Section 110 applies only to assistance authorized under sections 103 through 106 of the FAA (Development Assistance Funds) and Development Fund for Africa (DFA) funds because under section 496 of the FAA references in the FAA to sections 103-106 include the DFA. Therefore, it applies to the following appropriation accounts:

- (1) Development Assistance, and
- (2) Child Survival and Health Programs Fund (CSH).

It does not apply to assistance under other appropriation accounts, such as

- (1) Economic Support Funds (ESF),
- (2) Assistance for the Independent States of the Former Soviet Union (FSU),
- (3) Support for Eastern European Democracy (SEED),
- (4) International Disaster Assistance (IDA),
- (5) Transition Initiatives,
- (6) International Narcotics Control (INL), and
- (7) Development Credit Authority (DCA).

**b. Bilateral Assistance.** It applies only to “bilateral assistance,” that is, funds obligated by a SOAG or LSGA or other bilateral agreement with the host government. Therefore, it does not apply to direct USAID grants, cooperative agreements, or contracts with public international organizations or nongovernmental organizations (NGOs). It applies to regional programs only where the benefits to the host government can be clearly separated from benefits to other countries and the cost of the benefits can be adequately calculated to determine an overall cost to which to apply the 25 percent requirement.

**c. Host Government Benefit or Involvement.** It applies only to bilateral assistance where there is “host government benefit or involvement.” (See **350.3.5.2**)

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### 350.3.5.2 Host Government Benefit and Involvement

Effective Date: 05/05/2003

Even though the assistance may be initially obligated in a SOAG or LSGA, section 110 does not apply unless there is "host government benefit or involvement." Therefore, it is necessary to determine whether an activity involves substantial host government benefit or involvement. Host government benefit or involvement exists when there is substantial benefit to the host government or direct and substantial involvement by the host government in the administration, management, or control of the assistance.

For example, there is host government benefit or involvement

- a. When the assistance directly finances the costs of a government ministry or contracts to deliver goods or technical assistance to a host government ministry; or
- b. Where the host government retains the right in the SOAG or LSGA to approve the detailed terms and conditions of a private sector activity or to predominantly control the personnel, site selection, budget, or program content of a private sector organization and its activity.

Therefore, absent substantial host government benefit or involvement, section 110 does not apply to SOAG or LSGA activities implemented through USAID grants, cooperative agreements, or contracts with private voluntary organizations and other private entities. The host government signing an implementation letter or order to earmark or approve use of funds obligated by SOAG or LSGA for private sector activities is not substantial host government involvement or benefit.

### 350.3.5.3 Cost of the Program, Project, or Activity

Effective Date: 05/05/2003

In order to determine the amount of the host government contribution, you must determine the cost of the program, project, or activity and state it in the agreement.

- a. **Total Approach.** If the cost can be calculated at the outset, the total cost is stated in the initial agreement.
- b. **Incremental Approach.** Frequently, activities are not designed and described to the degree necessary to determine the total cost at the time of the initial agreement. In such cases, section 110 is applied incrementally to those activities for which funds are being obligated in the SOAG. Thereafter, as incremental funds for other activities are obligated by amendment to the SOAG, the operating unit recalculates the total cost and the host country contribution is recalculated. This incremental process requires adjustments to the contribution and the description of activities and budget in the SOAG and Annex 1.

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**c. Calculation.** In calculating the total cost, the operating unit deducts the cost of any activities not covered by section 110, for example, a private sector activity without substantial host government benefit or involvement. Operating units can include non-covered activities in calculation of the total cost in order to count other donor contributions as part of the 25 percent contribution.

**d. Total Included in Agreement.** The total amount of the host government contribution must be stated in the agreement. It can be stated as being conditioned on availability of funds, mutual agreement, and USAID fully obligating its total planned contribution. Funds for a multi-year program are usually obligated by USAID in annual increments by amendment(s). In this case, a lesser incremental 25 percent contribution must also be stated in the agreement without such conditions, proportionate to the incremental amount. Thus, the treatment of the host country contribution in the SOAG is parallel to the USAID funding in the SOAG.

### 350.3.5.4 Form, Valuation, and Timing of Host Government Contribution

Effective Date: 05/05/2003

The following provisions apply to determining the form, valuation, and timing of host government contribution:

**a. Cash or In-Kind Contributions.** Both cash and in-kind contributions are acceptable. The contribution of the recipient country government may cover operating or capital costs, including but not limited to: cash; capital goods; counterpart personnel; services and studies that support attainment of the program, project, or activity; rental or purchase of materials for operations or construction; administrative costs; land contributed by the country to attainment of the program, project, or activity; and costs related to the above items.

**b. Host Government-Owned Foreign Currency.** Host government-owned foreign currency may be used as the host country contribution, even where USAID retains certain joint programming rights over the funds. In many instances it is beneficial to both governments to use host government-owned foreign currency because the local currency will be available when needed and will be properly utilized for development purposes.

**c. Valuation.** In-kind contributions are estimated at fair market value in the host country at the time the estimation is made and converted to dollars for budgetary purposes at the exchange rate as of the time the agreement or relevant amendment is signed. Cash contributions in local currency are valued in the same way (i.e., converted to dollars) at the time the contribution is identified and described.

**d. Timing.** The 25 percent contributions must be made during the life of the program as set forth in the agreement, normally the disbursement period.

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

**350.3.5.5 Host Government Written Assurances and Compliance**

Effective Date: 05/05/2003

The host government must provide "assurances" of the 25 percent contribution satisfactory to USAID in writing before or at the obligation of funds. The host government contribution must be briefly described and quantified in the written assurances. It may be made simultaneously with or as part of the SOAG/LSGA.

USAID must determine in writing that the assurance is satisfactory before or at the time funds are obligated for an activity. In most cases, Mission Directors have been delegated in ADS 103 the authority and the responsibility to receive and determine the adequacy of assurances of host country contributions.

Successive assurances are required when using the incremental approach in **350.3.5.3**, unless a blanket assurance covering the ratio of contributions for all activities planned through the term of the SOAG is received at the outset.

Operating Units must include in the SOAG/LSGA or in an Implementation Letter a requirement for host governments to report at least annually on their contribution. At a minimum, the Operating Unit must review the report and determine if the host government contributions are reasonable in relation to the activity, staffing progress, and other factors. Operating Units are authorized to take additional steps to determine if the contribution is being made; for example, periodic Mission site visits, reviews, or evaluations.

**350.3.5.6 Waiver**

Effective Date: 07/23/2003

**Section 124(d) of the FAA** provides that a waiver of the host country contribution requirement may be made for a relatively least developed country (RLDC) on a case-by-case basis. It is USAID policy that the RLDCs include the "least developed countries" or "other low income countries" on the Development Assistance Committee (DAC) List of Aid Recipients and the "heavily indebted poor countries" (HIPC) under the World Bank HIPC Initiative. See **DAC List of Aid Recipients** (see [http://www.oecd.org/document/45/0,2340,en\\_2649\\_34447\\_2093101\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/45/0,2340,en_2649_34447_2093101_1_1_1_1,00.html) for the most recent version) and **HIPC List** (see <http://www.worldbank.org/hipc/about/map/map.html> for the most recent version). The fact that a country is an RLDC is not a sufficient justification for a waiver. Nor is it the intent of Section 124(d) to permit the granting of a waiver in all instances, since to do so would negate the case-by-case approach. A waiver is permissible whenever the initiation and execution of an otherwise desirable program, project, or activity is handicapped primarily by the 25 percent contribution requirement.

Operating Units must consider the factors below before granting a waiver:

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

- a. Financial Constraint.** Financial constraint is important but is not a sufficient justification for granting a waiver. In assessing the validity of the financial constraint, overall budgetary performance, existing expenditure patterns, and development priorities of the host country should be considered. Recent World Bank and IMF analyses of a country's financial performance may justify granting a waiver. Even where a waiver of the 25 percent contribution requirement may be justified, a determination must be made whether a lesser contribution would be appropriate, either of a financial or in kind nature. If it is decided that a contribution of less than 25 percent is inappropriate, a memorandum of justification must be prepared for the record.
- b. Country Commitment.** Where a waiver is justified on financial grounds, other indications that a country is interested in a particular program, project, or activity become more important. Examples of a country's interest are a willingness to contribute even though it is not 25 percent and the importance attached to the program, project, or activity in the country's development priorities.
- c. Nature of the Program.** The nature of a particular program, project, or activity is a significant factor. Where the success of an activity depends upon a country's willingness and ability to assume an appropriate share of the cost, a waiver might either not be justified or may be granted only if a lesser contribution is considered sufficient. On the other hand, there are a number of programs or activities where no country contribution needs to be required because their successful implementation can be expected to generate the necessary financial resources, other benefits and/or support -- thus providing reasonable assurance that the program, project, or activity will be continued. Pilot and demonstration activities fall into this category.
- d. Phased Contribution.** In some cases it may be desirable to combine the initial waiver of all or part of a contribution with a requirement for a gradually increasing contribution. This would allow the host government to reorder its expenditure pattern, and perhaps raise additional revenues without delaying the implementation of the program, project, or activity, while providing reasonable assurance that the host government will eventually assume the necessary share of expenditures in order to ensure the success of the program, project, or activity.
- e. Other Factors.** There may be other relevant considerations, such as how similar projects are funded by other bilateral donors.

### 350.3.6 Exceptions to Mandatory Provisions

Effective Date: 05/05/2003

The following requirements are in addition to approvals required above or by other ADS provisions:

*Text highlighted in yellow indicates that the adjacent material is new or substantively revised.*

- a. A change in the numbering, lettering, or titles of provisions or moving provisions within and between parts of an agreement does not require an exception.
- b. The cognizant RLA and Assistant General Counsel Office (AGC) are authorized to approve non-substantive exceptions.
- c. Operating Units are authorized to approve substantive exceptions, subject to the clearance of the cognizant RLA or AGC.
- d. Exceptions may be approved for a specific agreement or class of agreements.

**350.3.7 Transmission of International Agreements to the Assistant Legal Advisor for Treaty Affairs (State/L/T)**

Effective Date: 05/05/2003

See [ADS 349.3.3](#) for procedures for transmitting agreements to State/L/T.

**350.4 MANDATORY REFERENCES**

**350.4.1 External Mandatory References**

Effective Date: 07/23/2003

- a. [DAC List of Aid Recipients](#) (see [http://www.oecd.org/document/45/0,2340,en\\_2649\\_34447\\_2093101\\_1\\_1\\_1\\_1\\_00.html](http://www.oecd.org/document/45/0,2340,en_2649_34447_2093101_1_1_1_1_00.html) for the most recent listing)
- b. [HIPC List](#) (see <http://www.worldbank.org/hipc/about/map/map.html> for the most recent listing)
- c. [Sections 110, 124\(a\) and \(b\), and 635\(a\) and \(b\) of the Foreign Assistance Act of 1961, as amended \(FAA\)](#)

**350.4.2 Internal Mandatory References**

Effective Date: 05/05/2003

- a. [ADS 103, Delegations of Authority](#)
- b. [ADS 206, Prohibition of Assistance to Drug Traffickers](#)
- c. [ADS 225, Program Principles for Trade and Investment Activities and the "Impact on U.S. Jobs" and "Workers' Rights"](#)
- d. [ADS 349, International Agreements](#)

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- f. [ADS 350maa, Guidance on Funding Foreign Government Delegations to International Conferences](#)
- g. [ADS 350mab, Limited Scope Grant Agreement \(LSGA\)](#)
- h. [ADS 350mac, Strategic Objective Grant Agreement \(SOAG\)](#)
- e. [ADS 591, Financial Audits of USAID Contractors, Grantees, and Host Government Entities](#)
- i. **USAID Exchange Rate Policy Guidance**

### **350.4.3 Mandatory Forms**

Effective Date: 05/05/2003

There are no Mandatory Forms for this chapter.

### **350.5 ADDITIONAL HELP**

Effective Date: 05/05/2003

There are no Additional Help documents for this chapter.

### **350.6 DEFINITIONS**

Effective Date: 05/05/2003

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

#### **bilateral grant agreement or bilateral grant**

A grant by USAID to a foreign government or a subdivision of it; (for example, Ministry of Health, or a local or state government or agency) to finance activities in furtherance of a strategic objective or for other purposes. Bilateral grants range from grants financing specific objectives and limited scope grant agreements (LSGAs) to Strategic Objective Grant Agreements (SOAGs), commodity import program (CIP) grants, and cash transfer grants. (Chapter 350)

#### **Strategic Objective Grant Agreement (SOAG)**

The SOAG is the principal bilateral grant agreement used by USAID. A SOAG is composed of the Principal Text; Annex 1, Amplified Description; and Annex 2, Standard Provisions. (Chapter 350)

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