

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

---

ALLIANCE FOR OPEN SOCIETY  
INTERNATIONAL, INC. *et al.*,

Plaintiffs,

DECLARATION OF  
REBEKAH DILLER

-against-

UNITED STATES AGENCY FOR  
INTERNATIONAL DEVELOPMENT, *et al.*

Defendants.

---

I, REBEKAH DILLER, hereby declare as follows:

1. I am a Deputy Director of the Justice Program at the Brennan Center for Justice at NYU School of Law, which represents the Plaintiffs in the above-captioned case. I am admitted to practice before the bar of the State of New York, the United States District Courts for the Southern District of New York and the Eastern District of New York, and the United States Court of Appeals for the Second Circuit.

2. Plaintiffs submit this declaration to enter exhibits into evidence in support of the Plaintiffs' Motion for Leave to File A Second Amended Complaint and Motion by Global Health Council and InterAction for a Preliminary Injunction.

**DESCRIPTION OF EXHIBITS**

3. Attached as Exhibit A is the proposed Second Amended Complaint, dated February 8, 2008.

4. Attached as Exhibit B is a United States Agency for International Development ("USAID") directive entitled "Acquisition & Assistance Policy Directive

05-04 Amendment 1,” issued July 23, 2007 and available at the following URL:

[http://www.usaid.gov/business/business\\_opportunities/cib/pdf/aapd05\\_04\\_amendment1.pdf](http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd05_04_amendment1.pdf) (last accessed February 5, 2008).

5. Attached as Exhibit C is a United States Department of Health and Human Services (“HHS”) notice entitled “Guidance Regarding Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003,” published at 72 Fed Reg. 41,076 (July 26, 2007).

6. Attached as Exhibit D is a document entitled “Detailed Information on the USAID’s Development Assistance for Sub-Saharan Africa Assessment” from the White House’s website that I printed on February 5, 2008 from the following URL:

<http://www.whitehouse.gov/omb/expectmore/detail/10004603.2005.html>.

7. Attached as Exhibit E is a document entitled “Detailed Information on the President’s Emergency Plan for AIDS Relief: Focus Countries Assessment” from the White House’s website that I printed on February 5, 2008 from the following URL:

<http://www.whitehouse.gov/omb/expectmore/detail/10004619.2005.html>.

8. Attached as Exhibit F is a USAID document entitled “ADS Chapter 303 Grants and Cooperative Agreements to Non-Government Organizations” that was last updated by USAID on January 30, 2007 and that I printed on February 5, 2008 from the following URL: <http://www.usaid.gov/policy/ads/300/303.pdf>.

I declare under penalty of perjury that the foregoing is true and correct.

February 7, 2008  
New York, New York

  
REBEKAH DILLER (RD 7791)

## **Exhibit A**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, :  
INC., OPEN SOCIETY INSITUTE, PATHFINDER :  
INTERNATIONAL, GLOBAL HEALTH COUNCIL, and :  
INTERACTION : **SECOND AMENDED**  
: **COMPLAINT**

Plaintiffs,

v. : Civil Action No. 05-CV-8209  
: (VM) (DF)  
:

UNITED STATES AGENCY FOR INTERNATIONAL  
DEVELOPMENT and HENRIETTA FORE, in her Official :  
Capacity as Administrator of the United States Agency for :  
International Development, and her successors;

UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES and MICHAEL O. LEAVITT, in his  
official capacity as Secretary of the U.S. Department of  
Health and Human Services, and his successors; and

UNITED STATES CENTERS FOR DISEASE CONTROL  
AND PREVENTION and JULIE LOUISE GERBERDING,  
in her official capacity as Director of the U.S. Centers for  
Disease Control and Prevention, and her successors;

Defendants.

-----X

**I. INTRODUCTORY STATEMENT**

1. This is a civil action arising under the First Amendment to the United States Constitution, seeking redress against three agencies of the United States on behalf of entities whose constitutional rights are violated by a requirement that private organizations based in the United States adopt the government's ideology opposing prostitution in exchange for the receipt of U.S. government funding to stop the spread of HIV/AIDS.

2. Plaintiffs, all of which are based in the United States, include two non-profit recipients of U.S. government funding, a not-for-profit charitable foundation affiliated with one

of the recipients, and two non-profit membership organizations representing a broad range of U.S.-based recipients of government funding. Plaintiffs challenge the requirement that they adopt a policy opposing prostitution (“the policy requirement”) as violative of the First Amendment in three ways: a) it is unconstitutionally vague, b) it requires grantees to adopt as their own organization-wide policy the ideologically motivated position of the government regarding prostitution, and c) it bars grantees from using their own, non-government funding to engage in protected speech. Plaintiffs also challenge the implementation of the policy requirement by the defendant agencies as being contrary to the governing law.

## **II. JURISDICTION AND VENUE**

3. Subject matter jurisdiction is conferred upon the Court by 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b), (e).

## **III. THE PARTIES**

### **The Plaintiffs**

4. Plaintiff OPEN SOCIETY INSTITUTE (“OSI”) is a charitable trust organized and existing under New York law. It is a private foundation enjoying tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Its primary office is located at 400 West 59th Street, New York, New York 10019.

5. Plaintiff OSI is the principal United States-based foundation of the philanthropist George Soros. OSI works to support a network of more than 30 “Soros Foundations,” which operate in more than 60 countries worldwide.

6. In general, Plaintiff OSI and the Open Society network promote democratic governance, human rights, and economic, legal and social reform. On a local level, members of

the network implement a range of initiatives to support the rule of law, education, public health, and independent media.

7. Plaintiff OSI has received United States Agency for International Development funding in the past, and is interested in preserving its eligibility to receive Global AIDS Act funding from USAID in the future.

8. Plaintiff ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC. (“AOSI”) is a not-for-profit corporation incorporated under Delaware law. It enjoys tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Its primary office is located at 400 West 59th Street, New York, New York 10019. It has a branch office in Almaty, Kazakhstan.

9. Plaintiff OSI established Plaintiff AOSI in July, 2003, as a separately incorporated not-for-profit organization. Among the reasons for AOSI’s separate existence are: 1) a desire to concentrate, in a separate vehicle, the expertise OSI and the Open Society network in general have gained in implementing U.S. federal grants, and 2) a desire to coordinate OSI and Open Society network programs in Central Asia.

10. In October, 2003, Plaintiff OSI agreed to provide Plaintiff AOSI with a five-year grant in the amount of \$2,177,700 to support AOSI’s work in seeking and implementing U.S. government grants, as well as to support the creation of a Central Asia office of AOSI that would help coordinate Open Society network projects in that region.

11. Plaintiff PATHFINDER INTERNATIONAL (“Pathfinder”) is a non-profit corporation incorporated under District of Columbia law. It enjoys tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Its primary office is located at 9 Galen Street, Suite 217, Watertown, Massachusetts, 02472-4501.

12. Pathfinder was founded in 1957 by Dr. Clarence J. Gamble, a private philanthropist, and was one of the first U.S.-based organizations to address international population issues. Working in nearly 30 countries throughout Africa, Latin America, Asia, and the Near East, Pathfinder's mission is to provide access to quality family planning and reproductive health services to women, men, and adolescents throughout the developing world. Pathfinder's philosophy is to provide this assistance with concern for human rights, for the status and role of women, and from the perspective of the clients it serves. In addition to its family planning work, Pathfinder also works to halt the spread of HIV/AIDS, improve maternal and child health, and prevent unsafe abortions. It accomplishes these goals by developing partnerships with local non-governmental organizations, host country governments, the private sector, and health care providers.

13. Pathfinder's annual budget, which in fiscal year 2005 totaled more than \$76 million, is funded by grants and donations from multiple sources, including Defendants United States Agency for International Development and the United States Centers for Disease Control and Prevention, an operating agency of Defendant Department of Health and Human Services. Pathfinder also receives funds from several agencies of the United Nations, the Swedish, Canadian, British, and Dutch governments, the World Bank, and numerous foundations, corporations and individual donors.

14. Plaintiff INTERACTION is a private, not-for-profit, membership organization incorporated in New York and enjoying tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Its primary office is at 1400 16<sup>th</sup> St. NW, Washington, DC.

15. InterAction was founded in 1984 with the purpose of convening and coordinating U.S.-based, non-governmental organizations that work in the fields of international

development and humanitarian work. InterAction's mission is to assist its members in improving their own practices and to advocate for policies that benefit its members and the millions of people they serve worldwide. With one hundred and sixty members, InterAction is the largest alliance of U.S.-based international development and humanitarian non-governmental organizations.

16. InterAction's members, all of which are U.S.-based, tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code, are headquartered in twenty-five states, including New York. InterAction's member organizations are both faith-based and secular and operate in every country in the developing world. InterAction's members include Plaintiff Pathfinder.

17. InterAction's member organizations receive more than \$1 billion annually from the United States Government. Those funds come primarily through Defendant USAID, although they also come from Defendants United States Department of Health and Human Services ("HHS") and United States Centers for Disease Control and Prevention ("CDC") (collectively "HHS"). InterAction member organizations also receive more than \$7 billion in annual contributions from private donors, primarily individuals but also foundations and corporations. Some also receive funds from United Nations agencies, the World Bank, the European Community Humanitarian Office, and national governments, including those of the United Kingdom and France.

18. As a membership organization, InterAction provides a means through which members can collectively express concerns about U.S. policy. Sometimes, fear of retaliation by U.S. government agencies from which they receive funding prevents members from individually raising concerns about U.S. government policies. Through their membership in InterAction,



member organizations can collectively express objections to government policies in anonymity, and thus without such fear.

19. Twenty of InterAction's members both receive funding subject to the policy requirement and desire to receive that funding without being subject to the policy requirement.

20. Plaintiff GLOBAL HEALTH COUNCIL ("GHC") is a private, not-for-profit, membership alliance incorporated in Delaware and enjoying tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. GHC's executive office is located at 15 Railroad Row, White River Junction, VT 05001.

21. GHC was founded in 1972 under the name "National Council of International Health" as a U.S.-based, nonprofit membership organization with the purpose of identifying priority world health problems and reporting on them to the U.S. public, legislators, international and domestic government agencies, academic institutions and the world health community.

22. GHC's member organizations include many prominent U.S. non-profit and academic organizations working to alleviate the burden of disease and disability in the middle- and low-income countries. Individually and collectively, these organizations work to strengthen the ability of developing nations to address the critical problems of HIV/AIDS, child health, women's health, reproductive health, and infectious disease. GHC's members also include for-profit institutions and individuals based inside and outside the U.S., as well as non-profit organizations based outside the U.S.

23. As a membership organization, GHC provides a means through which members can collectively express concerns about U.S. policy. GHC members are often reluctant to publicly criticize the policies of the U.S. government or government agencies from which they receive funding. Through their membership in GHC, member organizations can collectively

express objections to government policies and make recommendations for new or revised policies.

24. Many of GHC's U.S.-based members administer programs or provide health care services to people with HIV/AIDS or at high risk of contracting the virus, and more intend to administer such programs in the future. Many of the members administering these programs receive funding to carry out HIV/AIDS work both from Defendants and from other, private sources. Twenty-eight of GHC's members both receive funding subject to the policy requirement and desire to receive that funding without being subject to the policy requirement.

### **The Defendants**

25. Defendant UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ("USAID") is an agency of the United States government. Its primary office is located in the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20523.

26. Defendant USAID uses funding provided by Congress for economic, development and humanitarian assistance around the world.

27. Defendant HENRIETTA FORE is the Administrator of Defendant USAID. Her office is located at Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20523.

28. Defendant Fore has responsibility for formulating and implementing USAID policies and practices. She is sued in her official capacity.

29. Defendant U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ("HHS") is an agency of the United States government. Its primary office is located in the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

30. Defendant HHS uses funding provided by Congress to develop programs for health protection and to provide human services to Americans in need.

31. Defendant MICHAEL O. LEAVITT is the Secretary of Defendant HHS. His office is located at Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

32. Defendant Leavitt has responsibility for developing and implementing HHS policies and priorities. He is sued in his official capacity.

33. Defendant United States Centers for Disease Control and Prevention (“CDC”) is an operating agency of HHS. Its primary office is located at 1600 Clifton Road, NE, Atlanta, GA, 30333.

34. Defendant CDC uses Congressional funding to prevent and control infectious and chronic diseases and environmental health threats.

35. Defendant JULIE LOUISE GERBERDING is the Director of Defendant CDC. Her office is located at 1600 Clifton Road, NE, Atlanta, GA 30333.

36. Defendant Gerberding is responsible for managing and directing the administrative and scientific activities of the CDC. She is sued in her official capacity.

#### **IV. THE GLOBAL AIDS ACT**

37. In 2003, Congress passed, and the President signed, the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (“Global AIDS Act” or “Act”), which is codified at 22 U.S.C. § 7601 *et seq.*

38. The Act implements the President’s Emergency Plan for AIDS Relief, which is a five-year global strategy for fighting HIV/AIDS, focusing on education, research, prevention,

treatment and care of persons living with HIV/AIDS. The Act authorizes the appropriation of \$3 billion in funding for each of fiscal years 2004 through 2008. 22 U.S.C. § 7671(a).

39. The funds, which are distributed by Defendants USAID, CDC, and HHS, and by other U.S. government entities, go to many non-governmental organizations based in the United States but doing work abroad (“US NGOs”), including Plaintiffs AOSI and Pathfinder and members of GHC and InterAction. The funds also go to foreign non-governmental organizations (“foreign NGOs”), which often receive the funds as subgrantees of U.S. groups, and to foreign governments and multilateral organizations.

40. The Act imposes on recipients of funding distributed under the Act two restrictions regarding sex work. The first provision (the “government funds restriction”) prohibits funds made available under the Act from being spent on activities that “promote or advocate the legalization or practice of prostitution and sex trafficking,” although it allows for the provision of health care to a sex worker. 22 U.S.C. § 7631(e).

41. Plaintiffs do not challenge either the government funds restriction or Defendants’ implementation of it.

42. The second restriction (the “policy requirement”) provides, in pertinent part, that “no funds made available to carry out this Act . . . may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.” 22 U.S.C. § 7631(f). The Act does not define “opposing prostitution.”

43. During legislative debate on the scope of the policy requirement prior to passage of the Global AIDS Act, Senate Majority Leader Bill Frist stated that “a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed to the practices of prostitution and sex trafficking because of the

psychological and physical risks they pose for women . . . would satisfy the intent of the provision.” 149 Cong. Rec. S6457 (daily ed. May 15, 2003) (statement of Sen. Frist).

44. While plaintiffs believe it is unconstitutional for the government to force them to adopt a policy position in order to qualify for Global AIDS Act funds, they do not challenge either the requirement that they have a “policy explicitly opposing . . . sex trafficking,” or the Defendants’ implementation of that requirement.

#### **V. USAID’S IMPLEMENTATION OF THE POLICY REQUIREMENT**

45. From February 2004 until June 2005, Defendant USAID did not apply the policy requirement to US NGOs on the advice of the federal Department of Justice (“DOJ”), which had issued a draft opinion stating that enforcement of the policy requirement against organizations based in the United States would be unconstitutional.

46. Then, in a letter dated September 20, 2004, the DOJ’s Office of Legal Counsel withdrew its earlier draft opinion that had declared enforcement of the policy requirement against US NGOs to be unconstitutional, and stated that “there are reasonable arguments to support [the] constitutionality” of the requirement.

47. USAID, in turn, began applying the policy requirement to US NGOs. USAID did this by issuing a policy directive requiring grantees to have in place “a policy explicitly opposing . . . prostitution and sex trafficking.” *See* USAID Acquisition & Assistance Policy Directive 05-04 (June 9, 2005). Neither in this policy directive, nor in any other written document, does USAID either define “explicitly opposing prostitution” or provide clear guidance on what privately funded activities are permissible and impermissible under the policy requirement.

## **VI. CDC AND HHS'S IMPLEMENTATION OF THE POLICY REQUIREMENT**

48. Until May 2005, Defendants HHS and CDC did not apply the policy requirement to US NGOs. Instead, HHS and CDC required that “any foreign recipient” that received funding under the Global AIDS Act have “a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking.” *See, e.g.,* Implementation of Prevention of Mother to Child Transmission Services in Kenya, 69 Fed. Reg. 35360, 35363 (June 24, 2004).

49. Beginning on or about May 2005, HHS and CDC began applying the policy requirement to US NGOs. They required that “any recipient” of funds under the Global AIDS Act must have “a policy explicitly opposing prostitution and sex trafficking.” *See, e.g.,* Expansion and Support of HIV/AIDS/STI/TB Information, Education, Communication and Behavioral Change Communication Activities in Ethiopia – Amendment, 70 Fed. Reg. 29759, 29759-29760 (May 24, 2005).

50. HHS and CDC have not defined the term “explicitly opposing prostitution” nor have they issued guidance to the public explaining which types of activities are permissible and impermissible under this restriction.

51. HHS and CDC have required all recipients of Global AIDS Act funding to “agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization’s compliance [with the policy requirement].” *See, e.g.,* Expansion and Support of HIV/AIDS/STI/TB Information, Education, Communication and Behavioral Change Communication Activities in Ethiopia – Amendment, 70 Fed. Reg. 29759, 29759-29760 (May 24, 2005).

## **VII. BROAD CONSTRUCTIONS PLACED ON THE POLICY REQUIREMENT**

52. USAID officials and others have placed a number of broad interpretations on the policy requirement. These interpretations all indicate how broadly observers can construe the policy requirement in the absence of any guidance from USAID.

53. In a meeting with AOSI and OSI personnel in April 2005, Kent Hill, the acting assistant administrator for global health of Defendant USAID, articulated several broad, but vague, interpretations of the policy requirement, although he emphasized that he could not provide official guidance on the policy. First, he stated that he believed the policy requirement bars grantees from advocating legalization of sex work, and might bar advocating for too great a reduction in penalties for sex work, or helping to unionize sex workers.

54. Second, he stated that he thought organizing sex workers to prevent police from brutalizing them might violate the requirement if USAID decided that the work was merely a front for advocating the legalization of sex work.

55. Third, he stated that he believed even if a group adopted a policy statement that was compliant on its face, that organization could be found to be in violation of the policy requirement if USAID concluded that the organization truly felt sex work should be legalized and that the totality of statements made that clear.

56. In a subsequent fax from the Mission Director of the USAID Mission to the Central Asia Republics to Plaintiff AOSI, USAID repeated part of Hill's interpretation. The October 7, 2005, fax stated that two activities -- "advocating for the legalization of the institution of prostitution" and "organizing or unionizing prostitutes for the purposes of advocating for the legalization of prostitution, as distinct from organizing for the purposes of deterring human rights abuses and addressing public health issues" -- would indicate that an

organization “does not explicitly oppose prostitution.” USAID has refused to confirm that these two activities are the only activities barred by the policy requirement.

57. Even before USAID started applying the policy requirement to Plaintiff AOSI, staff at the Central Asia Republics mission of Defendant USAID cautioned AOSI not to use the term “sex worker” in publicly available documents because that might connote acceptance of sex work. Plaintiffs do not know whether USAID will construe all public use of the term “sex worker” as violating the policy requirement.

58. Senator Tom Coburn has construed the policy requirement as barring Global AIDS Act grantees from running a program providing educational materials and health and safety training for sex workers. On May 19, 2005 he demanded that President Bush investigate USAID grantee and GHC member Population Services International for engaging in such activities. Sen. Coburn does not charge that the grantee promoted changes in the legal status of sex work. Rather, his complaint seems to be that the grantee uses non-traditional teaching methods to educate sex workers about HIV transmission. On information and belief, Defendant USAID is delaying renewed funding of this program as a result of Sen. Coburn’s complaint.

59. In still another far-reaching interpretation of the policy requirement, on July 15, 2005, 28 members of Congress wrote to Defendant USAID charging that an HIV prevention project carried out by USAID grantee CARE, an InterAction and GHC member, violates the policy requirement because it has “a rights-based” approach to sex work, which the members of Congress interpret as advocating “the legalization of prostitution and its cultural acceptance as a legitimate form of employment.” On information and belief, USAID has not yet responded to this allegation.



60. Likewise, some members of Congress have asserted that a debate program for high school and university students run by the Soros Foundation Kazakhstan, which received USAID civic education funding, promoted the legalization of sex work. Defendant USAID found this assertion to be unfounded.

61. In another Congressional interpretation of the policy requirement, on December 7, 2005 Representative Mark Souder wrote a letter to the Hon. Andrew Natsios, the then-Administrator of USAID, accusing CARE, a member of both GHC and InterAction, of violating the policy requirement by using private funds to support a tuberculosis prevention program run through an Indian sex worker organization called the Durbar Mahila Samanwaya Committee (“DMSC”). Representative Souder accused CARE of violating the policy requirement by working with and providing private funding to DMSC, which he stated advocates for the decriminalization of adult prostitution.

62. In June 2006, USAID officers contacted CARE’s senior managers in India and Bangladesh to inquire about CARE’s relationship with DMSC, which only receives private funds from CARE and is not connected with CARE’s USAID- or CDC-funded HIV/AIDS work.

63. Upon information and belief, Defendants HHS and CDC have made no effort to limit or define the scope of the policy requirement.

## **VIII. THE INTERIM GUIDELINES**

64. In July 2007, Defendants USAID and HHS issued new guidelines purporting to allow recipients of Global AIDS Act funding to use private funds to engage in activities prohibited by the policy requirement, so long as the recipients maintained sufficient separation between those activities and activities funded by the Global AIDS Act. USAID’s guidelines are contained in Acquisition and Assistance Policy Directive 05-04, Amendment 1 (July 23, 2007).

HHS's guidelines are contained in a document entitled, Guidance Regarding Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, 72 Fed. Reg. 41,076 (July 26, 2007).

65. The Interim Guidelines continue to require recipients of Global AIDS Act funds to adopt policies explicitly opposing prostitution.

66. The Interim Guidelines require recipients of cooperative agreements to "have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex-trafficking ('restricted activities')." According to the guidelines, a recipient will satisfy this test if "(1) The affiliated organization is a legally separate entity; (2) The affiliated organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize restricted activities; and (3) The Recipient is physically and financially separate from the affiliated organization."

67. The Interim Guidelines do not provide clear guidance regarding how a grantee can ensure that it is physically and financially separate enough from an affiliate that engages in "restricted activities." Rather, they list five non-exclusive factors, warning that the agencies "will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative."

68. The five factors that may be considered in determining physical and financial separation are: "(i) The existence of separate personnel, management, and governance; (ii) The existence of separate accounts, accounting records, and timekeeping records; (iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate; (iv) The extent to

which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or restricted activities are absent; and (v) The extent to which USAID, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conferences and press or public statements.”

69. The July 2007 USAID and HHS guidelines were issued without either notice or an opportunity for the public to provide comments. Upon information and belief, Defendant HHS intends to begin a notice and comment process by April 2008.

## **IX. HOW THE POLICY REQUIREMENT AND INTERIM GUIDELINES AFFECT THE PLAINTIFFS**

### **The Effect of the Policy Requirement on Plaintiffs AOSI and OSI**

70. Plaintiffs AOSI and OSI are opposed to the harms that sex work inflicts both on the individuals directly involved and to others in various ways.

71. Nonetheless, the policy requirement detrimentally affects Plaintiff AOSI and the clients it serves in several ways. If Defendant USAID construes the policy requirement as covering Plaintiff OSI, then the policy requirement detrimentally affects OSI too.

72. Both AOSI and OSI have, as their principles of governance, an adherence to the principles of an open society, including opposition to adopting any policy positions that would lead to the stigmatization of socially marginalized groups. Adopting a policy opposing sex work violates this principle.

73. In addition to requiring USAID grantees and contractors to adopt a policy, the policy requirement appears to also require USAID grantees and contractors, including Plaintiff AOSI, to conform their activities to the policy. The policy requirement applies both to activities

conducted with government funding and to activities conducted with funding that comes from other sources.

74. Consequently, the policy requirement places a blanket ban on the use of the private, non-governmental funds possessed by Plaintiff AOSI to do work that Defendant USAID construes as being insufficiently opposed to sex work.

75. Plaintiffs do not know whether USAID also construes the policy requirement as requiring Plaintiff OSI to conform its activities – including its privately funded activities – to any policy opposing sex work that AOSI may adopt. On at least one occasion, USAID has indicated that it views OSI as a “partner” in AOSI’s USAID-funded work.

76. AOSI and OSI engage in a significant amount of privately funded activity that could be barred by the policy requirement. Both are at the forefront of efforts to reduce the spread of HIV/AIDS by working with people who are at particularly high risk of contracting HIV/AIDS and passing it on to others.

77. In many regions, when the HIV/AIDS epidemic begins it is concentrated in small populations of people, including sex workers, drug users, and others. When public health officials are able to focus their efforts on those populations, they can stop the epidemic before it spreads to the rest of the population.

78. In order to stop the epidemic among sex workers it is necessary to approach sex workers and other people at high risk of becoming infected with HIV in a non-judgmental manner, in order to establish a trusting relationship with them and engage them in needed HIV prevention efforts.

79. Efforts recognized as highly successful in fighting the spread of HIV/AIDS have involved organizing sex workers, or working cooperatively with sex worker organizations.

80. In some regions, advocating for a change in the legal regime surrounding sex work has been an essential part of fighting the HIV/AIDS epidemic, because when sex workers are subject to high fines, arrest, or violence, they go underground, avoiding doctors, outreach workers, and others who want to provide them with the education, condoms, and other tools they need to avoid becoming infected and infecting others.

81. As discussed above, Plaintiffs do not know how broadly USAID construes the policy requirement. However, if USAID construes the policy requirement broadly to bar advocating changes in the legal treatment of sex workers; promoting community organizing among sex workers; or working with, or talking about, sex workers in a non-judgmental fashion, then advocacy of the most successful tactics in the fight against HIV/AIDS may well be forbidden.

82. For this reason, the government of Brazil, and a number of highly respected US NGOs and foreign NGOs, have turned down USAID funding since implementation of the policy requirement. Other NGOs operating under the policy requirement have documented the ways in which the requirement is impeding their efforts to fight HIV/AIDS.

83. Plaintiffs AOSI and OSI are committed to using their private funding to facilitate discussion among public health experts, doctors, social service providers, advocates, government officials, and others regarding the most effective ways to fight the spread of the epidemic in the populations at the highest risk for contracting HIV/AIDS.

84. For example, OSI's Sexual Health and Rights Program attempts to foster debate regarding policies designed to improve the sexual health and rights of socially marginalized populations, including sex workers, and to encourage the adoption and implementation of the

most effective policies. It would be difficult for OSI to advocate for a free debate regarding policies to improve sexual health if it had to stigmatize sex workers.

85. Likewise, a broad implementation of the policy requirement could prevent OSI from continuing to promote a publication it has funded, titled *Sex Work, HIV/AIDS, and Human Rights in Central and Eastern Europe and Central Asia*, which recommends that sex work be decriminalized as a means of protecting sex workers from abuse by law enforcement personnel, traffickers, and pimps, thus making it easier for sex workers to access the health and social services they require in order to remain healthy and informed. OSI does not itself take any position regarding the contents of the report, or regarding the desirability of changes in the legal status of sex work. However, it did provide funding and technical assistance for the Central and Eastern European Harm Reduction Network, which wrote the report, and it desires to continue assisting the Network in distributing the report.

86. AOSI and OSI conduct many other activities potentially affected by a broad implementation of the policy requirement. These include:

- a) co-sponsoring conferences in their New York offices, including an October 14, 2005 conference entitled, “Sex Work, Sexual Rights and Countering the Conservative Sexual Agenda,” and a follow-up conference on September 19, 2006 entitled “Sex Work and Human Rights: Promoting Rights-Based Perspectives on Sex Work.” The goal of these conferences is to bring together members of different advocacy and service delivery communities – such as domestic and international groups, and groups working with sex workers and victims of trafficking – to discuss key policy issues. Among the topics of discussion the legal status of sex work;
- b) operating a listserv that provides a forum for participants to share information, opinions, and resources related to the health, safety and well-being of sex workers in Eastern Europe and the former Soviet Union. Participants post content regarding best practices, service gaps, model legislation, advocacy strategies, and new initiatives; and
- c) providing funding and technical assistance to a number of other non-profit organizations working with sex workers to fight the spread of HIV/AIDS.

Several of these groups are studying the circumstances in which sex workers work and developing policy recommendations. It is essential that these groups remain free to advocate for the most effective policies, including – where appropriate – changes in the legal treatment of sex workers in order to facilitate outreach to them and ensure their access to needed health care and social services.

87. There exists a serious risk that AOSI and OSI will be subject to intrusive and unwarranted governmental investigations regarding whether AOSI and OSI are engaged in activities that the investigators construe as insufficiently opposed to sex work.

88. Plaintiffs AOSI and OSI find the policy requirement to be vague and confusing. They do not know which of their current or future activities Defendant USAID will construe as running afoul of the policy requirement.

89. Under Acquisition & Assistance Policy Directive 05-04, if a recipient violates the policy requirement, USAID will unilaterally terminate the funding agreement or contract.

90. Were Defendant USAID to find Plaintiffs AOSI or OSI out of compliance with the policy requirement and unilaterally terminate Plaintiff AOSI's grant, AOSI's clients would suffer.

91. Were Defendant USAID to find Plaintiffs AOSI or OSI out of compliance with the policy requirement, a danger exists that civil or criminal penalties would be imposed on Plaintiff AOSI for falsely certifying compliance with the requirement.

#### **AOSI's Decision to Sign the Pledge**

92. AOSI is operating a highly successful, five-year Drug Demand Reduction Program aimed at reducing the use of heroin and other injectable opiates, and stopping the spread of HIV/AIDS, in a region of Central Asia where drug use is rising as a result of rampant drug trafficking and is fueling the spread of HIV/AIDS.

93. AOSI operates this program primarily with a \$16,507,402 five-year grant from Defendant USAID. AOSI contributes some of its non-government funding, and OSI contributes funding, technical assistance, and administrative support.

94. OSI is not a party to, and has no legal obligations under, the Cooperative Agreement with USAID establishing the Drug Demand Reduction Program.

95. Since USAID began implementing its policy requirement, the Plaintiffs have been torn between their desire to continue this successful, life-saving work, and their desire to avoid adopting an ideologically driven government policy that will hurt their ability to do their life-saving work with their own funding.

96. In the spring of 2004, when AOSI's Drug Demand Reduction Program subgrantees based outside of the United States were required to comply with the policy requirement, AOSI adopted the following statement:

AOSI and the Soros Foundations in Tajikistan and Kyrgyzstan believe that trafficking and sex work do harm both to the individuals directly involved and to others in various ways. AOSI and the Soros Foundations in Tajikistan and Kyrgyzstan do not promote or advocate such activities. Rather, our approach is to try to reduce the harms caused by disseminating credible information on questions such as the prevention of disease, and by providing direct public health assistance to vulnerable populations. ...

97. AOSI then wrote to USAID, asking whether this policy statement satisfied the version of the policy requirement then in effect. USAID responded twice, both times failing to indicate whether the policy was compliant. In the second response, however, USAID warned AOSI that any failure to comply would be subject to investigation by USAID's Inspector General.

98. In July 2005, after USAID imposed the policy requirement on US NGOs, AOSI again wrote to USAID, asking whether the policy statement AOSI had adopted in the spring of



2004 satisfied the policy requirement, and also whether USAID would take OSI's activities into account in determining whether AOSI is in compliance.

99. After receiving that letter, USAID held up releasing the latest installment of funds for the Drug Demand Reduction Program for six weeks, throwing the work of the Drug Demand Reduction Program into disarray.

100. AOSI finally received a response from USAID on August 2, 2005, stating yet again that it could not provide any guidance regarding whether AOSI's policy satisfies the policy requirement but that AOSI would be subject to sanctions if it failed to comply.

101. The next day, USAID sent a grant agreement to AOSI, obligating USAID to fund an additional \$542,300 for the Drug Demand Reduction Program, but only if AOSI certified its compliance with USAID's policy requirement. In order to restart the flow of USAID funding, and to avoid the harm that clients would suffer if additional components of the Drug Demand Reduction Program were forced to shut down, AOSI decided to sign the certification. It did so after carefully reviewing its own policy and the language of the policy requirement, and assuring itself that, according to its interpretation of the requirement, it was in compliance.

102. On August 3, 2005, AOSI sent the signed grant agreement to USAID, along with a cover letter reciting the required pledge. In that letter, AOSI stated its belief that the policy it had implemented in the spring of 2004 complies with the policy requirement and that OSI's actions have no bearing on AOSI's compliance or noncompliance with the requirement. Additionally, AOSI reserved its rights "to challenge the policy requirement as violative of the First Amendment and other law." USAID issued an agreement obligating itself to provide enough funding to AOSI to enable the Drug Demand Reduction Program to operate through the

middle of 2006. In subsequent agreements, USAID obligated itself to provide continued funding for the program.

**The Effect of the Policy Requirement on Plaintiff Pathfinder**

103. In order to be eligible to continue receiving U.S. government funds for HIV/AIDS work, Pathfinder adopted the following policy in July 2005:

In order to be eligible for federal funding for HIV/AIDS, Pathfinder opposes prostitution and sex trafficking because of the harm they cause primarily to women. Pathfinder's HIV/AIDS programs seek to promote effective ways to prevent the transmission of HIV/AIDS and to reduce the suffering caused by HIV/AIDS. In order to achieve these goals, Pathfinder works with, and provides assistance and support to and for, many vulnerable groups, including women who are commercial sex workers, who, if not effectively reached by HIV/AIDS programs, will suffer and can become drivers of the HIV/AIDS epidemic.

104. Pathfinder adopted this policy solely in order to remain eligible to receive U.S. government funding to provide desperately needed HIV/AIDS prevention and care work around the world. Pathfinder was required to adopt the policy as a condition of receiving funds to continue its U.S. government-funded work to provide health services in Mozambique, Peru, Kenya, Tanzania, Botswana, Nigeria and elsewhere.

105. The policy requirement detrimentally affects Plaintiff Pathfinder and the clients it serves in several ways.

106. First, Pathfinder has been forced to stake out a policy position on an issue on which it wished to remain neutral at this time. Were it not for the mandate in the Global AIDS Act, Pathfinder would not have adopted the above policy. As an international relief organization operating in multiple countries, each with their own set of laws and cultures, Pathfinder is mindful of the need to refrain from taking policy positions without careful study and deliberation. With the exception of the anti-prostitution policy it adopted to comply with the policy requirement, its policy positions have been formed only after deeply studying the issue,

primarily by examining its own experience promoting access to health care in the developing world.

107. Second, Pathfinder has been forced to adopt a policy to comply with a provision that is vague and confusing. Pathfinder believes it is in compliance with the policy requirement. However, given the lack of guidance from USAID, HHS and CDC as to the requirement's meaning, in the absence of an injunction against operation of the policy requirement it will have to operate in constant fear that defendants USAID, HHS and CDC will apply an overly broad interpretation of the policy requirement to its activities and find it out of compliance with the policy requirement.

108. Third, Pathfinder engages in a significant amount of privately funded activity that could be barred by an overly broad construction of the policy requirement's blanket ban on the use of the private, non-U.S. government funds possessed by Plaintiff Pathfinder to do work that Defendants construe as being insufficiently opposed to sex work. Pathfinder firmly believes that it is complying with the policy requirement, but it does not know whether defendants USAID, HHS, and CDC agree.

109. Much of Pathfinder's HIV/AIDS prevention work is aimed at vulnerable populations, including sex workers. Pathfinder currently runs programs in Mozambique, India and Brazil to prevent the spread of HIV among sex workers and has in the past run similar programs in Nigeria. Key to these programs are efforts to organize sex workers and to work cooperatively with existing organizations composed of individuals involved in sex work to promote the health, human rights and well-being of sex workers.

110. As is common among most international relief organizations, Pathfinder works with local groups to identify their needs and priorities. Pathfinder seeks to assist local groups,

including organizations composed of sex workers, in achieving the goals they have identified within the international framework of their right to health.

111. For example, Pathfinder's privately funded "Mukta" program in India seeks to organize sex workers so that they will collectively agree to engage in HIV prevention methods, such as using condoms. While Pathfinder believes that its organizing of sex workers in India complies with the policy requirement, it fears that defendants USAID, HHS, and CDC may construe the policy requirement in an overly broad manner and subject Pathfinder to penalties should sex worker organizations it has fostered or cooperated with then pursue goals that Defendants view as being inconsistent with opposition to prostitution.

112. Pathfinder's Mukta program also conducts outreach to brothel owners and pimps in an attempt to foster safer sex practices. While Pathfinder conducts this work for the purpose of promoting HIV prevention and assisting the women in the brothels, it also must, at times, secure the trust of brothel owners in order to gain access to the women it is trying to help. Although Pathfinder believes that this outreach does not violate the policy requirement as set forth in the Global AIDS Act, it fears that defendants USAID, HHS and CDC might view this outreach as being insufficiently "opposed to prostitution."

113. Similarly, Pathfinder employee Dr. Carlos Laudari has previously worked with community organizations in Brazil that, as part of their efforts to limit exploitation of sex workers, have sought to change laws and regulations surrounding commercial sex work so that they do not serve as a pretext for brothel owners, corrupt police and others to abuse sex workers.

114. Fourth, Pathfinder engages in a variety of speech in the United States that it could be forced to censor as a result of the policy requirement.

115. For example, Pathfinder has an active, privately funded advocacy program within the United States that could be forced to censor itself as a result of the policy requirement. Part of Pathfinder's mission is to improve the U.S. policy environment for international family planning and reproductive health programs. Pathfinder accomplishes this by educating U.S. policy-makers and the general public about conditions facing women and their families in developing countries and the impact U.S. policies have on the effectiveness of family planning and HIV/AIDS service delivery. Pathfinder now must ensure that any advocacy it undertakes conforms to the policy requirement.

116. The policy requirement also affects Pathfinder's ability to publish in the U.S. – on its website and elsewhere – the results of the HIV/AIDS research it conducts and the HIV/AIDS training material it creates.

117. Likewise, the policy requirement limits Pathfinder's ability to describe its current and past work overseas to potential donors and others in the U.S.

**The Effect of the Policy Requirement on Plaintiffs InterAction and Global Health Council and Their Members**

118. The policy requirement harms Plaintiffs InterAction, GHC, and their members in several ways.

119. First, the policy requirement forces U.S.-based InterAction and GHC members, which generally prize their independence from the government, to become a mouthpiece for the U.S. government's position on a particular social issue, even when speaking with their private funds. For these members, the adoption of a government-mandated, organization-wide policy on this or any issue violates dearly held principles of independence that are fundamental to their operation as non-governmental organizations.

120. Second, the policy requirement forces InterAction and GHC members to make a policy statement on an issue on which many wish to remain neutral. Many members believe that prostitution causes serious health, psychological, and physical risks for women, and they work to address those risks and assist women in finding alternatives. However, these members also believe that by forcing them to explicitly oppose prostitution, the policy requirement stigmatizes one of the very groups whose trust they must earn to conduct effective HIV/AIDS prevention and forces them to approach those engaged in prostitution in what will be perceived as a judgmental manner.

121. Third, the policy requirement restricts the ability of U.S.-based InterAction and GHC members to use non-U.S. government funds to do work that Defendants construe as being insufficiently opposed to prostitution. For example, the policy requirement threatens the privately funded HIV/AIDS prevention work of U.S.-based InterAction and GHC member CARE with sex worker organizations and networks in India and Bangladesh. Similarly, IntraHealth, a U.S.-based GHC member, has been forced to refrain from developing new, privately funded initiatives to remove barriers to health care for sex workers for fear that such projects could risk defunding of their USAID- and CDC-funded projects.

122. Fourth, the policy requirement has caused massive confusion among U.S.-based InterAction and GHC members over what constitutes compliance with the requirement. Many of these members are unsure of what activities and speech they may and may not engage in with private funds. Members have received a wide variety of responses by organizations and by USAID officials to the policy requirement.

123. Fifth, the policy requirement chills and precludes the policy debate essential to the functioning of GHC and InterAction as professional associations that depends on the free flow of

evidence and opinion among their members to carry out their respective missions of promoting public health and promoting sound international development and humanitarian policy. The Policy Requirement precludes members of GHC and InterAction from freely discussing and sharing the lessons of their HIV prevention work with sex workers at meetings convened by and in publications issued by GHC and InterAction.

## **X. THE EFFECT OF THE INTERIM GUIDELINES**

124. The guidelines issued by Defendants USAID and HHS in July 2007 only exacerbate the problems associated with the policy requirement. They do not answer any of the most basic questions about what Plaintiffs can and cannot say with their private funds and they make the creation of an affiliate prohibitively burdensome.

### **A. Vagueness**

125. The guidelines have only increased Plaintiffs' uncertainty about the speech and activities in which they are permitted to engage under the policy requirement. Significantly, the guidelines offer no guidance about which activities Plaintiffs and the members of GHC and InterAction must conduct through a separate entity.

126. Moreover, although the guidelines require that Plaintiffs and the members of GHC and InterAction be "physically and financially separate from the affiliated organizations," they do not provide clear guidance regarding how Plaintiffs can ensure that they are physically and financially separate enough.

### **B. The Burdens of Creating a Legally Separate Entity**

127. The guidelines place a prohibitive burden on the ability of Plaintiffs and the members of GHC and InterAction to set up an affiliate that can use private funds to engage in activities otherwise barred by the policy requirement.

128. By requiring the affiliate to be “a legally separate entity,” the Interim Guidelines would force Plaintiffs and the members of GHC and InterAction to register the affiliate in each of the countries in which they operate. Obtaining approvals from multiple governments to run a second, affiliated organization would be extraordinarily difficult, expensive, and time-consuming, and, in some countries, it would be virtually impossible.

129. Additionally, Plaintiffs and the members of GHC and InterAction will face difficulties securing visas for American or other foreign employees of the new entity.

130. The guidelines’ requirement of separate management and governance will prevent Plaintiffs and the members of GHC and InterAction from speaking through any affiliate.

131. The Plaintiffs and members of GHC and InterAction will incur significant expenses of paying for new and separate office space, local staff, foreign staff, necessary vehicles (including customs and tax costs as well as vehicle costs), office equipment, security, telephone and Internet access, and other services.

132. The Plaintiffs and members of GHC and InterAction will face problems opening new bank accounts in many countries. Banks may require evidence of registration with and approval by the government, and national laws or regulations may limit the number of bank accounts or even prohibit multiple accounts per organization, per donor, or per project. Plaintiffs and the members of GHC and InterAction are also likely to face tax burdens.

133. Plaintiffs and the members of GHC and InterAction will also face, as a consequence of complying the guidelines, substantial risk of significantly enhanced suspicion by government, security, intelligence and police authorities in countries concerned that new and separate affiliates are being created in order to evade tax, customs, or other government regulations.



134. The guidelines will also make it more difficult for Plaintiffs and the members of GHC and InterAction to raise funds for two reasons. First, in a highly competitive fundraising environment, the newly-formed separate affiliates would have no track record of accomplishment, which potential donors use to decide where to allocate their charitable funds. Second, the increased administrative costs incurred from dividing the work that a member does in dozens of countries into new and separate affiliates would likely downgrade a member's ranking by independent certification organizations that rank charitable organizations, because those rankings are often largely predicated on how small a percentage of an organization's budget goes into overhead.

## **XI. CAUSES OF ACTION**

135. The policy requirement contained in the Global AIDS Act, 22 U.S.C. § 7631(f); Acquisition & Assistance Policy Directive 05-04; and as effectuated by CDC and HHS, and the Interim Guidelines issued thereunder, are unconstitutionally vague, in violation of the First Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

136. The policy requirement contained in the Global AIDS Act, 22 U.S.C. § 7631(f); Acquisition & Assistance Policy Directive 05-04; and as effectuated by CDC and HHS, and the Interim Guidelines issued thereunder, violate the rights of Plaintiffs under the First Amendment to the United States Constitution by forcing them to adopt an entity-wide policy opposing prostitution in exchange for the receipt of government funds.

137. The policy requirement contained in the Global AIDS Act, 22 U.S.C. § 7631(f); Acquisition & Assistance Policy Directive 05-04, and as effectuated by CDC and HHS, and the Interim Guidelines issued thereunder, violate the rights of Plaintiffs under the First Amendment

to the United States Constitution by imposing the policy requirement on the funding that the Plaintiffs receive from sources other than the U.S. government.

138. Any application by Defendants of the anti-prostitution policy requirement contained in the Global AIDS Act, 22 U.S.C. § 7631(f), to require a policy statement broader than the policy statement that plaintiff AOSI implemented in the spring of 2004 and plaintiff Pathfinder International adopted in the summer of 2005 is not in accordance with the Global AIDS Act and should be held unlawful pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 702, 706(2)(A).

139. Any application by Defendants of the anti-prostitution policy requirement contained in the Global AIDS Act, 22 U.S.C. § 7631(f), to bar the Plaintiffs from engaging in particular activities because they are perceived as being insufficiently opposed to sex work is not in accordance with the Global AIDS Act and should be held unlawful pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 702, 706(2)(A).

WHEREFORE, Plaintiffs respectfully request the Court to:

(1) declare that USAID's application to Plaintiffs AOSI and Pathfinder, the U.S.-based members of Plaintiffs InterAction and GHC, and other US NGOs of the policy requirement contained in Acquisition & Assistance Policy Directive 05-04 and Interim Guidelines violate the First and Fifth Amendments to the United States Constitution;

(2) declare that the application by HHS and CDC to Plaintiff Pathfinder, the U.S.-based members of Plaintiffs InterAction and GHC, and other U.S.-based organizations of the policy requirement and Interim Guidelines violates the First and Fifth Amendments to the United States Constitution;

(3) grant appropriate preliminary, and final, equitable relief

(a) barring Defendants from enforcing the Policy Requirement against Plaintiffs AOSI and Pathfinder and the U.S.-based members of Plaintiffs InterAction and GHC, and

(b) barring USAID, HHS and CDC from enforcing the policy requirement against any U.S.-based organization; and

(4) grant such other and further relief as the Court shall deem proper, including the award of reasonable attorneys' fees and costs.

Dated: New York, New York  
February 8, 2008



Rebekah Diller (RD 7791)  
Laura K. Abel (LA 6831)  
David S. Udell (DU 4762)  
BRENNAN CENTER FOR JUSTICE  
AT NYU SCHOOL OF LAW  
161 Avenue of the Americas,  
12th Floor  
New York, NY 10013  
(212) 992-8635

Richard A. Johnston\*  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6000

David W. Bowker (DB 3029)  
Wilmer Cutler Pickering Hale and Dorr LLP  
399 Park Avenue  
New York, NY 10022  
(212) 230-8800

*Attorneys for Plaintiffs*

\* admitted *pro hac vice*

## **Exhibit B**



**USAID**  
FROM THE AMERICAN PEOPLE

## Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: July 23, 2007

### AAPD 05-04 Amendment 1

#### Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 – Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking

Subject Category: ACQUISITION MANAGEMENT, ASSISTANCE

Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: ☐ Is New Replaces/ X Amends CIB/AAPD No: 05-04

Applicable to:

- ☒ Existing awards; ☐ Modification required
- ☐ No later than
- ☒ As noted in guidance below
- ☒ RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC
- ☐ Other or N/A

Precedes change to:

- AIDAR Part(s) Appendix
- ☒ USAID Automated Directives System (ADS) Chapter 302, 303, and 308
- ☒ Code of Federal Regulations 22 CFR 226
- ☐ Other
- ☐ No change to regulations

New Provision/Clause Provided Herein

*(Signed copy on file)*

Michael F. Walsh  
Director



## 1. PURPOSE:

The purpose of this AAPD amendment is to provide to COs and AOs criteria for determining whether or not a USAID contractor or recipient complies with the eligibility and limitations provisions in AAPD 05-04, if it has an affiliation with an organization that may not be in compliance.

### Required Actions:

- (1) COs and AOs must consider the "Organizational Integrity Guidance" in the Guidance section below when determining a prospective or existing contractor or assistance recipient's eligibility or compliance with the provisions in AAPD 05-04.
- (2) COs and AOs must obtain clearance from their legal counsel before issuing any written determination pertaining to USAID awards that include the provisions in AAPD 05-04.

## 2. BACKGROUND:

This guidance is designed to provide additional clarity for Contracting and Agreement officers, Contracting Specialists, Cognizant Technical Representatives, Health Officers and our implementing partners (e.g., grantees, contractors) regarding the application of the policy requirement expressed in 22 U.S.C. § 7631(f), which provides that organizations receiving Leadership Act funds ("Recipient organizations" or "Recipients") must have a policy explicitly opposing prostitution and sex-trafficking (the "policy requirement").

In enacting the statute from which this requirement originates, the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the "Leadership Act"), Congress developed a framework to combat the global spread of HIV/AIDS, tuberculosis and malaria. As part of that Act, to ensure that the Government's organizational partners will not undermine this goal through the promotion of counterproductive activities, the Leadership Act provides that all funding recipients, subject to limited exceptions, must have a policy explicitly opposing prostitution and sex trafficking. It is critical to the effectiveness of Congress's plan and to the U.S. Government's foreign policy underlying this effort, that the integrity of Leadership Act programs and activities implemented by organizations receiving Leadership Act funds is maintained, and that the U.S. Government's message opposing prostitution and sex-trafficking is not confused by conflicting positions of these organizations.

Accordingly, the U.S. Government provides this Organizational Integrity Guidance to clarify that the Government's organizational partners that have adopted a policy opposing prostitution and sex-trafficking may, consistent with the policy requirement, maintain an affiliation with separate organizations that do not have such a policy, provided that such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex-trafficking, as specified in this guidance. To maintain program integrity, adequate separation as outlined in this guidance is required between an affiliate which expresses views on prostitution and sex-trafficking contrary to the government's message and any federally-funded partner organization.

The criteria for affiliate independence in this guidance is modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in Velazquez v. Legal Services Corporation, 164 F.3d 757, 767 (2d Cir. 1999), and Brooklyn Legal Services Corp. v. Legal Services Corp., 462 F.3d 219, 229-33 (2d Cir. 2006), cases involving similar organization-wide limitations applied to recipients of federal funding.

This guidance clarifies that an independent organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The independent affiliate's position on these issues will have no effect on the recipient organization's eligibility for Leadership Act funds, so long as the affiliate satisfies the criteria for objective integrity and independence detailed in the guidance. By ensuring adequate separation between the recipient and affiliate organizations, these criteria guard against a public perception that the affiliate's views on prostitution and sex-trafficking may be attributed to the recipient organization and thus to the Government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex-trafficking.

This guidance may be shared with USAID implementing partners.

See also AAPD 05-04.

### 3. **GUIDANCE:**

CO's and AO's must consider the below guidance when evaluating whether a recipient's policy opposing prostitution may be implicated by an affiliate of the recipient.<sup>1</sup>

Note that the term "Recipient" used below applies to both contractors and the recipients of grants or cooperative agreements.

#### **Organizational Integrity Guidance:**

USAID contractors, grantees and recipients of cooperative agreements ("Recipients") must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex-trafficking ("restricted activities"). A Recipient will be found to have objective integrity and independence from such an organization if:

- (1) The affiliated organization is a legally separate entity;

---

<sup>1</sup>Regarding Required Action (2), the Federal Acquisition Regulation (FAR) subpart 2.101 defines "Affiliates" as follows:

"Affiliates" means associated business concerns or individuals if, directly or indirectly—

- (1) Either one controls or can control the other; or
- (2) A third party controls or can control both.

This definition is not inconsistent with the guidance provided in this amendment to AAPD 05-04. There is no corresponding definition in USAID assistance regulations.



(2) The affiliated organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize restricted activities; and

(3) The Recipient is physically and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. USAID will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel, management, and governance;

(ii) The existence of separate accounts, accounting records, and timekeeping records;

(iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate;

(iv) The extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or restricted activities are absent; and

(v) The extent to which USAID, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conferences and press or public statements.

#### 4. POINT OF CONTACT:

USAID CO and AO may direct their questions about this AAPD amendment to Diane Bui, GC/GH & EGAT, Phone (202) 712-0529 e-mail: [dibui@usaid.gov](mailto:dibui@usaid.gov). Contractors, recipients, and prospective offerors for contracts or assistance awards must direct their questions to the cognizant Contracting Officer or Agreement Officer for the award.



## **Exhibit C**

NOTICES

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Global Health Affairs; **Guidance Regarding Section 301(f)** of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003

Thursday, July 26, 2007

AGENCY: Office of Global Health Affairs, HHS.

**\*41076 ACTION:** Guidance.

SUMMARY: Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the "Leadership Act"), [P.L. No. 108- 25](#) (May 27, 2003), [22 U.S.C. 7631\(f\)](#), prohibits the award of grants, contracts or cooperative agreements for activities funded under the Act to any organization that does not have an explicit policy opposing prostitution and sex trafficking. Section 301(f) states as follows:

Limitation.--No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.

The following guidance provides additional information on the policy requirement expressed in this law for entities that receive grants, contracts, or cooperative agreements from the U.S. Department of Health and Human Services ("HHS") to implement programs or projects under the authority of the Leadership Act. Specifically, it describes the legal, financial, and organizational separation that should exist between these recipients of HHS funds and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking.

FOR FURTHER INFORMATION CONTACT: Maggie Wynne, Office of Global Health Affairs, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 639H, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: This guidance is designed to provide additional clarity for Contracting and Grant officers, Contracting Officers' Technical Representatives, Program Officials and implementing partners (e.g., grantees, contractors) of HHS regarding the application of language in Notices of Availability, Requests for Proposals, and other documents pertaining to the policy requirement expressed in [22 U.S.C. 7631\(f\)](#), which provides that organizations receiving Leadership Act funds must have a policy explicitly opposing prostitution and sex trafficking (the "policy requirement").

In enacting the statute from which this requirement originates, the Leadership Act, Congress developed a framework to combat the global spread of HIV/AIDS, tuberculosis, and malaria. As a part of that Act, to ensure that the Government's organizational partners will not undermine this goal through the promotion of counterproductive activities, the Leadership Act provides that all funding recipients, subject to limited exceptions, must have a policy explicitly opposing prostitution and sex trafficking. It is critical to the effectiveness of Congress's plan and to the U.S. Government's foreign policy underlying this effort, that the integrity of Leadership Act programs and activities implemented by organizations receiving Leadership Act funds is maintained, and that the U.S. Government's message opposing prostitution and sex trafficking is not confused by conflicting positions of these organizations.

Accordingly, the U.S. Government provides this "Organizational Integrity" Guidance to clarify that the Government's organizational partners that have adopted a policy opposing prostitution and sex-trafficking may, consistent with the policy requirement, maintain an affiliation with separate organizations that do not have such a policy, provided that such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex trafficking, as specified in this guidance. To maintain program integrity, adequate separation as outlined in this guidance is required between an affiliate which expresses views on prostitution and sex trafficking contrary to the government's message and any federally-funded partner organization.

The criteria for affiliate independence in this guidance is modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in *Velzquez v. Legal Services Corporation*, 164 F.3d 757, 767 (2d cir. 1999), and [\*Brooklyn Legal Services Corp. v. Legal Services Corp.\*, 462 F.3d 219, 229-33 \(2d Cir. 2006\)](#), cases involving similar organization-wide limitations applied to recipients of federal funding.

This guidance clarifies that an independent organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The independent affiliate's position on these issues will have no effect on the recipient organization's eligibility for Leadership Act funds, so long as the affiliate satisfies the criteria for objective integrity and independence detailed in the guidance. By ensuring adequate separation between the recipient and affiliate organizations, these criteria guard against a public perception that the affiliate's views on prostitution and sex-trafficking maybe attributed to the recipient organization and thus to the government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex trafficking.

This guidance may be shared with HHS implementing partners. Guidance: HHS contractors, grantees and recipients of cooperative agreements ("Recipients") must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex

(Cite as: 72 FR 41076)

trafficking ("restricted activities"). A recipient will be found to have objective integrity and independence from such organization if:

- (1) The affiliated organization is a legally separate entity;
- (2) The affiliated organization receives no transfer or Leadership Act funds, and Leadership Act funds do not subsidize restricted activities; and
- (3) The Recipient is physically and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors \*41077 relevant to this determination shall include but will not be limited to:
  - (i) The existence of separate personnel, management, and governance;
  - (ii) The existence of separate accounts, accounting records, and timekeeping records;
  - (iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate;
  - (iv) The extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or restricted activities are absent; and
  - (v) The extent to which HHS, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conference and press or public statements.

EFFECTIVE DATE: This guidance is effective on the final date of publication.

Dated: July 23, 2007.

William R. Steiger,

Director.

[FR Doc. 07-3658 Filed 7-23-07; 11:59 am]

BILLING CODE 4150-38-M

72 FR 41076-01, 2007 WL 2125830 (F.R.)

END OF DOCUMENT

## **Exhibit D**



## DETAILED INFORMATION ON THE USAID'S DEVELOPMENT ASSISTANCE FOR SUB-SAHARAN AFRICA ASSESSMENT

- [View this program's assessment summary.](#)
- [Visit ExpectMore.gov](#) to learn more about how Federal Government programs are assessed and their plans for improvement.
- [Learn more](#) about detailed assessments.

<b>Program Code</b>	10004603		
<b>Program Title</b>	USAID's Development Assistance for Sub-Saharan Africa		
<b>Department Name</b>	Intl Assistance Programs		
<b>Agency/Bureau Name</b>	Agency for International Development		
<b>Program Type(s)</b>	Competitive Grant Program		
<b>Assessment Year</b>	2005		
<b>Assessment Rating</b>	Adequate		
<b>Assessment Section Scores</b>	<b>Section</b>	<b>Score</b>	
	Program Purpose & Design	80%	
	Strategic Planning	88%	
	Program Management	80%	
	Program Results/Accountability	50%	
<b>Program Funding Level (in millions)</b>	<b>FY2007</b>	\$596	
	<b>FY2008</b>	\$611	
	<b>FY2009</b>	\$490	

**Note** Funding levels for 2006 and 2007 have not been finalized at the time of publication. Funding information will be updated on ExpectMore.gov as this information becomes available.

- [Ongoing Program Improvement Plans](#)
- [Completed Program Improvement Plans](#)
- [Program Performance Measures](#)
- [Questions/Answers \(Detailed Assessment\)](#)

### Ongoing Program Improvement Plans

Year Began	Improvement Plan	Status	Comments
2005	Implementing the new Strategic Framework for Foreign Assistance so that program resources are allocated to best advance U.S. foreign policy priorities and recipient country progress.	Action taken, but not completed	USAID has initiated reform of its budgeting process to better allocate program resources according to recipient country performance. This process reinforces the Strategic Framework for Foreign Assistance, which aligns aid resources with U.S. foreign policy priorities. Budgets are allocated to program areas that best advance each country's progress, and that in turn advance U.S. policy. The result is a budget focused on country progress continuously monitored for program effectiveness.
2005	Developing and applying common outcome goals to assure program advancement, especially of Presidential Initiatives.	Action taken, but not completed	Operating Unites submitted Operational Plans conforming to the Strategic Framework for Foreign Assistance with standardized goals and performance measures aligned with the Standardized Program Structure and related standard Indicators. This ensures that similar activities such as those through a Presidential Initiative contribute to common outcomes. During FY07, ongoing programs and monitoring tools were cross-walked with the standardized structure to encourage contribution toward agreed goals.
2005	Align country mission staff levels and operating expense funds with International assistance levels to increase program efficiency.	Action taken, but not completed	The Africa Bureau is refining its Resource Harmonization Model to guide restructuring of our overseas presence. This model is a sophisticated tool for allocating staff to missions taking into consideration program size, economies of scale and difficulty of doing business. The use of this tool ensures that staffing size is appropriate for the management of our programs across various levels of funding and complexity.

### Completed Program Improvement Plans

Year Began	Improvement Plan	Status	Comments
------------	------------------	--------	----------

### Program Performance Measures

Term	Type	Measure
Long-term	Outcome	Measure: Value of exports to US from AGOA countries where USAID is active (excluding fuel products, in billions \$)

*Explanation:* Calculated using total imports minus energy, minerals, and metals)

Year	Target	Actual
2004	Baseline	3450
2005	3450	2900
2006	3500	3200

2007	3500	3587
2008	3590	
2009	3600	
2010	3600	
2011	3610	
2012	3610	

**Annual Efficiency Measure:** Program dollars expended by rural households benefiting directly from the program.

*Explanation:* The proportion of DA account that supports agricultural programs is high and as such, this indicator is representative of the account.

Year	Target	Actual
2004	\$150	\$134.33
2005	\$125	\$35.98
2006	\$100	\$25.82
2007	\$30	\$26.48
2008	\$30	
2009	\$30	

**Annual Output Measure:** Number of individuals benefiting directly from USAID agriculture interventions

*Explanation:*

Year	Target	Actual
2008	17,665,567	
2009	18,548,845	
2004	Baseline	19,759,500 (All)
2005	5,429,460 (IEHA)	6,922,817 (IEHA)
2006	8,500,000 (IEHA)	9,679,750
2007	10,500,000 (IEHA)	16,824,350

**Long-term Outcome Measure:** Hectares under improved management for biodiversity conservation

*Explanation:*

Year	Target	Actual
2012	90,000,000	
2011	85,000,000	
2010	80,000,000	
2009	75,000,000	
2008	71,728,610	
2004	Baseline	15,758,998
2005	17,547,212	19,000,000
2006	19,335,427	21,049,267
2007	21,800,000	63,980,019

**Annual Outcome Measure:** Percentage of fragile states, in which a peace process has been successfully concluded, where 25% or more of internally displaced persons return home or are voluntarily resettled

*Explanation:*

Year	Target	Actual
2008	60%	
2009	60%	
2004	Baseline	14%
2005	20%	42%
2006	25%	56%
2007	30%	58%

**Long-term Outcome Measure:** Median cost to register a business as a share of per capita gross national income

*Explanation:*

Year	Target	Actual
2012	94%	
2011	96%	
2010	98%	
2004	Baseline	124.5%
2005	121.4%	139.6%
2006	118.9%	120%

2007	115.9%	106%
2008	103%	
2009	100%	

Annual Outcome Measure: Average net enrollment in primary education

Explanation: pending data analysis

Year	Target	Actual
2001	Baseline	58.7%
2004	64%	64.2%
2005	64.5%	65%
2006	65%	67.6%
2007	68.0%	68.8%
2008	68.2%	
2009	68.4%	

Long-term Outcome Measure: Percentage of targeted local government areas that are more responsive to citizens interests

Explanation:

Year	Target	Actual
2012	65	
2011	65	
2010	64	
2009	63	
2008	62	
2004	Baseline	37
2005	39	40
2006	50	60
2007	61	61

Long-term Outcome Measure: Percent of fragile states where USAID is working that show a biennial improvement in political stability thereby moving closer to TD targets

Explanation: Kauffman-Kraay Index

Year	Target	Actual
2012	60%	
2011	55%	
2010	55%	
2009	50%	
2004	Baseline	35%
2006	40%	46%
2008	50%	

Long-term Outcome Measure: Girls' primary education completion rate

Explanation: pending data analyss

Year	Target	Actual
2010	58%	
2011	58.3%	
2012	58.5%	
2001	Baseline	46%
2004	55%	55%
2005	56.2%	58%
2006	61%	56%
2007	57%	58.6%
2008	57%	
2009	57.5%	

Long-term Outcome Measure: Agricultural productivity in areas of USAID interventions

Explanation:

Year	Target	Actual
2012	6.0%	
2011	6.0%	
2010	6.0%	



2009	6.0%	
2008	6.0%	
2004	Baseline	0
2005	3.6%	22%
2006	3.6%	7.18%
2007	6.0%	6.0% est.

Annual Output Measure: Number of firms directly participating in USAID-sponsored activities to strengthen their competitiveness and productivity

Explanation:

Year	Target	Actual
2008	34,000	
2009	36,000	
2004	Baseline	22,477
2005	27,605	21,782
2006	32,732	27,605
2007	32,732	33,000 est.

### Questions/Answers (Detailed Assessment)

#### Section 1 - Program Purpose & Design

Number	Question	Answer	Score
1.1	Is the program purpose clear?	YES	20%

**Explanation:** The program has a well-defined broad objective; however, the program's activities are spread across a broad spectrum of sector and country activities with insufficient financial resources to have a major impact in many of them. As directed by appropriations legislation, the Development Assistance (DA) account funds activities for free-market economic development, agriculture, rural development, literacy and basic education for children and adults, environment, energy, science and technology and other programs related to longer-term transformational development. Any earmarks or restrictions are reflected in the annual Foreign Operations Appropriations Act. Priorities for DA funding in the AFR region are agriculture and the environment, trade, education, democracy and governance, and conflict mitigation. DA program funds will be increasingly directed towards those countries that are performing well, demonstrate need, and exhibit commitment to the principles of sound governance, investing in their people and economic freedom. The use of DA will be further clarified through the creation USAID's new Strategic Framework for Africa. AFR's use of DA funds is aligned with US foreign policy priority to advance sustainable development and global concerns and contribute to all Agency-wide goals of economic growth and agricultural development, democracy and good governance, human capacity building, and environmental protection. Each AFR Operating Unit (OU) aligns with the Bureau's program purpose via a limited number of country-specific strategic objectives (SOs). OUs are USAID field Missions, regional entities, and USAID/Washington Offices that expend program funds to achieve approved Strategic Objectives. In FY 2004, the AFR Bureau provided \$462.2 million in DA funds for 100 SOs managed by 31 OUs overseas and in Washington.

**Evidence:** 1) Secretary of State Statement in Bureau Performance Plans (BPPs), p.5-8 2) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, p.18-25 3) Assistant Administrator Pierson testimony to SFRC, March 2, 2005, p.3-5 4) FY 2006 Congressional Budget Justification (CBJ) Africa overview 5) H.R. 4818 Consolidated Appropriations Act, 2005: Development Assistance (entire document) 6) Strategic Framework for Africa

1.2	Does the program address a specific and existing problem, interest, or need?	YES	20%
-----	--	-----	-----

**Explanation:** The DA program addresses numerous specific needs and problems within the AFR region. The DA program in the AFR region supports U.S. foreign policy interests while addressing country level needs. U.S. foreign policy interests include promoting broad-based economic growth, strengthening democratic processes, reducing poverty, protecting and improving health and nutrition, and environmental protection. Africa is the world's poorest region and the development challenges are diverse. Half of Africa's 700 million people live on less than \$1 a day. By 2015, it is forecasted that two-thirds of the world's hungry will be in Africa. The majority of the world's HIV/AIDS pandemic is in sub-Saharan Africa. Sub-Saharan Africa contains 45 percent of global biodiversity, yet has the highest rate of deforestation in the world. These challenges are documented through AFR's strategic planning processes, in the Budget Justification to Congress (CBJ), in sector summaries of USAID Annual Reports, as well as in development statistics from other institutions such as the World Bank and the UN Economic Commission for Africa. Additionally, challenges faced by each country are reflected in each Mission Performance Plan (MPP), which encompasses all activities of United States Government (USG) agencies working in the country and in the region.

**Evidence:** 1) Secretary of State Statement in Bureau Performance Plans (BPPs), p.5-8 2) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, p. 18-25 3) Assistant Administrator Pierson testimony to SFRC, March 2, 2005, p.3-5 Example of a Sector Summary: Health, Population, and Nutrition Results Reporting, May 2004, p.69-84 4) A sample of statistics on Africa from the World Bank 5) Congressional Budget Justification (CBJ) Africa overview, FY 2006 (entire overview) 6) Selected Mission Performance Plans: Kenya 2006, p.3-6 and DROC 2006, p.3-7 7) Strategic Framework for Africa 8) President Bush comments on importance of Africa, June 13, 2005: [www.state.gov/p/af/rls/rm/2005/47785.htm](http://www.state.gov/p/af/rls/rm/2005/47785.htm) 9) UN Human Development Report 2004 [hdr.undp.org/reports/global/2004/pdf/hdr04\\_complete.pdf](http://hdr.undp.org/reports/global/2004/pdf/hdr04_complete.pdf)

1.3	Is the program designed so that it is not redundant or duplicative of any other Federal, state, local or private effort?	YES	20%
-----	--	-----	-----

**Explanation:** The DA program is designed so that it is not redundant or unnecessarily duplicative of any other Federal, state, local or private efforts. As the lead United States Government (USG) foreign assistance entity in a developing host country, USAID coordinates with all other in-country USG entities under the aegis of the U.S. Ambassador, as well as with the host government

and other prominent donors. This coordination serves to eliminate program redundancies and to promote country program synergies. USAID regularly signs Inter-Agency agreements to avoid duplication of efforts and to create program synergies among all actors. Preparation of the annual Mission Performance Plan (MPP) is coordinated by the U.S. Embassy and documents all activities of USG agencies that are carried out in that country (see MPPs for Kenya and the Democratic Republic of Congo). Coordination issues are also addressed through Country Team meetings, involving the principals of all USG entities and chaired by the Ambassador, and are held on a weekly basis. Additionally, the Africa Bureau has developed a close working relationship with colleagues at the Millennium Challenge Corporation (MCC) as they begin to sign compacts in African nations (Madagascar being the first MCC compact ever) and in administration of the MCA Threshold Country program. Furthermore, USAID and other bilateral and multilateral donors, the relevant host Government Office, and implementing partners including the UN health agencies meet regularly to share development experiences, and maximize assistance outcomes. Finally, the AFR DA program is able to actively coordinate with the private sector through the Global Development Alliance (GDA) mechanism of public-private partnerships, leveraging private sector resources and eliminating duplication of efforts. Nonetheless, the large number of aid donors, both public/official and private/NGO, with different programming, monitoring and enforcement, and accounting modalities seriously tasks the limited implementation capabilities of African aid recipient governments. Along with other donors, USAID agreed in the Paris declaration to simplify reporting procedures for host countries, an effort which needs to be strongly pursued in order to improve the efficiency and effectiveness of aid in African countries.

*Evidence:* 1) Mission Performance Plan: Kenya 2006, p.7-38 and DROC 2006, p.8-26 2) Department of State/USAID Joint Management Council Charter 3) Congressional Budget Justification (CBJ) Africa overview, FY 2006 : Other Donor section, p. 5 5) Global Development Alliance Guidelines 6) The Automated Directives System (ADS) - Sections 201.3.6 and 201.3.7 (pg. 26-38) Preparation of Strategic Plans. Section 201.3.9.2 Donor coordination analysis in the strategic planning phase. 7) Example GDA initiative in AFR: Royal Ahold's Fruit and Vegetable Alliance 8) Examples of inter-agency agreements with other USG entities: Department of Treasury, Financial Planning and management technical assistance to the Government of Guinea; Department of State, Civilian Police officers for United Nations Mission in Sierra Leone.

1.4 Is the program design free of major flaws that would limit the program's effectiveness or efficiency? NO 0%

*Explanation:* The DA program's effectiveness is constrained by extensive legislative earmarking, rigidities in the ability to shift funding between countries because of perceived entitlements, and program authorization and obligation modalities. Within these constraints, AFR operating units (OUs) develop a Results Framework (RF) for each strategic objective (SO), linking the development challenge being addressed to program implementation activities and milestones to be achieved. The SO is the most ambitious result in a particular program area that an operating unit (with its partners) can materially affect and for which it is willing to be held accountable. The RF is informed by various technical and resource analyses including evaluations, sector assessments, lessons learned, and gender and country conflict vulnerability analyses. The AFR Bureau's design process is initiated at the Mission level to ensure that the AFR Missions have strategies that are relevant to the specific country needs and circumstances. USAID requires that Operating Units include Washington customers, USAID partners, host country governments, the donor community, non-governmental organizations (NGOs), the private sector, and host country beneficiaries and stakeholders in the development of Strategy Statements. Under the Africa Bureau Framework, each Mission will update their Strategy Statement each year. All OU strategies are subject to intensive agency-wide reviews. ADS 201 details the planning/design process. The AFR bureau also has the flexibility to leverage funding from other sources including the private sector, foundations, etc. to increase the efficiency of the funds it expends through the DA account. Global Development Alliances (public-private partnerships) and donor coordination allow for this flexibility.

*Evidence:* 1) ADS 201, pg. 29-32 Content of Strategic Plans; ADS 201 pg. 45-51 Mandatory and other analyses for developing Strategic Plans. (Note that the ADS 201 is currently under revision) 2) Example of AFR review of OU Strategic Plan: Eritrea Strategy Review Cable 3) Global Development Alliance Guidelines 4) Examples of inter-agency agreements with other USG entities: Department of Treasury, Financial Planning and management technical assistance to the Government of Guinea; Department of State, Civilian Police officers for United Nations Mission in Sierra Leone. 5) Example GDA initiatives in AFR: Royal Ahold's Fruit and Vegetable Alliance

1.5 Is the program design effectively targeted so that resources will address the program's purpose directly and will reach intended beneficiaries? YES 20%

*Explanation:* The DA program is effectively targeted to reach intended beneficiaries. Management in the AFR Bureau is decentralized in that individual strategies are developed and implemented by OUs that have constant and direct contact with the program beneficiaries. Widespread consultation with prominent partners, customers (including beneficiaries), and stakeholders is critical to the development and implementation of all OUs strategic plans. This consultation is done through meetings, workshops, retreats, and surveys. The results of these consultations are integrated into Strategy Statements. In addition, Country and Assistance Checklists are completed and cleared by all relevant offices including the General Counsel, Procurement, and Financial Management to ensure that USAID assistance is targeted at eligible countries and cooperating organizations that are registered with USAID and certified as having adequate financial and administrative systems and controls for receiving USAID funding. USAID is legally restricted from providing assistance to various organizations such as military and police. To ensure that services reach the intended beneficiaries, USAID independent evaluations (see 2.6) are conducted to validate program approaches and direction and serve as the basis for any mid-course corrections. USAID monitors assistance received by beneficiaries through evaluating data collected in the performance monitoring plan (PMP) as well as grantee/contractor reports, general project monitoring and field visits.

*Evidence:* 1) Example of Participatory Planning: Operational Unit Strategy: Ghana 2004-2010, p.23, p.99-148 2) ADS 201.3.42 Roles of Partners, Customers, and Stakeholders 3) ADS 201.3.3.4 Country Prohibitions and Restrictions 4) Statutory Checklists, 2005 (entire document) 5) TIPS Number 7: Preparing a Performance Management Plan 6) Example of a Performance Management Plan (PMP): South Africa SO 5 (entire document) 7) Selected Mission Annual Report: Uganda FY 2004, p. 8-19

Section 1 - Program Purpose & Design Score 80%

## Section 2 - Strategic Planning

Number Question Answer Score

2.1	<p><b>Does the program have a limited number of specific long-term performance measures that focus on outcomes and meaningfully reflect the purpose of the program?</b></p> <p><i>Explanation:</i> The Africa DA program does have specific long-term performance measures which are detailed in the Measures Tab. The process by which these outcome-focused performance measures were vetted assures that they reflect the purpose of the program. Overarching agency-wide long-term strategic goals are articulated in the Department of State and USAID Strategic Plan for Fiscal Year 2004 to 2009. The Department of State-USAID Joint Performance Plan is the forward-looking document that further defines the agency-level goals and targets. The strategic goals, which can be categorized under Democracy and Human Rights, Economic Prosperity and Security, and Social and Environmental Issues, inform the framework within which the agency, and subsequently, each geographic bureau, conducts its performance planning. Outcome-based performance measures were developed to track the progress of Africa's DA program in achieving the strategic objectives listed in the State-USAID joint strategy. Additionally, the Africa bureau is currently developing a Bureau Strategic Framework to set regional priorities and to align and harmonize a set of contextual and regional performance indicators that would provide valuable performance information to managers both in the field and at Washington headquarters. At the Operating Unit (OU) level, the regional performance indicators and targets, as well as baseline data, are or will be contained in every OU's Performance Management Plan (PMP). At the OU-level, there are identifiable long-term indicators and targets that are linked to the Strategic Objectives related to DA. These indicators and targets, as well as baseline data are contained in every OU's Performance Management Plan.</p> <p><i>Evidence:</i> 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, p.1-4, 18-25 2) Joint Performance Plan, p.2-11, 36-62, 158-267 3) ADS 203 Performance Management (emphasis on ADS 203.2 through 203.3.5) 4) Agency FY 2004 Performance and Accountability Report, p.10-12, 24-36, 98-107, 122-174 5) USAID Primer: What we do and how we do it, p.2-5, 18-20 6) Strategic Management Interim Guidance (entire document) 7) US Foreign Aid: Meeting the Challenges of the 21st Century, p.1-9, 17-23 8) Example of a Performance Management Plan (PMP): South Africa SO 5 (entire document) 9) Example of an Operational Unit Strategy: Ghana 2004-2010, p.21, 29-93 10) Selected Mission Annual Report: Uganda FY 2004, p. 8-34 11) 2005 Annual Reporting Guidance, Section I, Sub-section A, Item 5 p.6, Guidance Annex VIII, page 29</p>	YES 12%
2.2	<p><b>Does the program have ambitious targets and timeframes for its long-term measures?</b></p> <p><i>Explanation:</i> Given the extreme poverty in most African countries, the weak economic, social, and political institutions, the widespread problems of poor transparency on government programs, and the systemic threat to progress that endemic diseases such as HIV/AIDS and malaria present, levels of ambition for foreign assistance programs in African countries must be cautiously assessed. The Africa Bureau's DA program has appropriately ambitious targets and timeframes for its long-term measures. Examples of these targets and timeframes can be found in the Measures tab. AFR is currently completing an intensive, bureau-wide effort to develop a Strategic Framework for Africa with regional performance indicators and baseline data. A number of the indicators within this framework specify how Africa DA activities impact the greater African social and economic trends. They will also be used to assess progress against annual targets set by the Washington Bureaus and Missions in the field. Targets are expressed as percentages where appropriate, or as actual figures in cases where an actual quantified number can be used. Operating Units (OUs) are delegated the authority to define quantitative and verifiable targets and timeframes for their respective Strategic Objectives (SOs, the Bureau's key, ambitious and challenging measures), however these targets are reviewed and vetted by the Africa Bureau and PPC, and are reported each year in the Annual Report (AR). The OU's Performance Management Plan details targets by SO over the life of the program. OUs are responsible for data quality assessments to determine the measures' validity, reliability, timeliness, precision, and accuracy. The Africa Bureau reviews targets at the SO level during the strategy approval process and also during the Operational Unit intensive review process (every 3 years).</p> <p><i>Evidence:</i> 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, p.18-25 2) Joint Performance Plan p.40-62, 158-267 3) Selected Mission Annual Report: Uganda FY 2004, p.8-34 4) OU-level indicators - South Africa SO 5 (entire document) 5) Draft USAID/Guinea Triennial Review Reporting Cable 6) ADS 203.3.5 Data Quality Assessments 7) ADS 203.3.3 Performance Management Plans</p>	YES 12%
2.3	<p><b>Does the program have a limited number of specific annual performance measures that can demonstrate progress toward achieving the program's long-term goals?</b></p> <p><i>Explanation:</i> USAID's performance management framework is structured around a limited number of ambitious but achievable strategic objectives and goals (developed jointly with the Department of State) as part of the Joint Performance Plan writing process. The AFR DA performance goals, targets, and indicators are logically linked to these long-term joint goals and objectives, enabling USAID to demonstrate progress towards achieving them. (For example, the annual performance measure of "average net enrolment in primary education" leads to the long-term outcome indicator (and goal of increased) "girls' primary education completion rate.") The AFR Bureau measures its performance against this structure through a set of discrete, quantifiable, and measurable annual targets and contextual and performance indicators, which are monitored by the AFR Bureau and are reported each year in the annual reporting process. At the OU level, the PMP includes annual performance measures which are used to assess progress towards the program's long-term goals and objectives. The PMP provides baseline data, annual targets, and other important information. Performance of SOs is assessed and documented annually. The PMPs are based on grantee and contractor information but developed, designed, and managed by USAID staff. All partners regularly report on their performance as required by contract and grant agreements signed with USAID. AFR OUs review these performance reports, monitor and verify information in the field and via other sources.</p> <p><i>Evidence:</i> 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, p.18-25 2) Joint Performance Plan, p.7-11, p.40-62, p.158-267 3) OU-level indicators - South Africa SO 5 (entire document) 4) 2005 Annual Reporting Guidance, Section I, Sub-section A, Item 5 (Page 6) and Guidance Annex VIII, page 29</p>	YES 12%
2.4	<p><b>Does the program have baselines and ambitious targets for its annual measures?</b></p> <p><i>Explanation:</i> Building on a deep understanding of the challenges inherent in achieving meaningful progress in African Development, the DA program has taken great care in selecting a series of annual performance measures with ambitious, yet achievable targets. Annual performance measures exist at both the OU and the regional level. At the OU level, baselines and targets are documented in each OU's Performance Management Plans and Annual Reports. Baselines and targets are included for measures related to higher level Strategic Objectives (SOs) as well as the incremental Intermediate Results (IRs) that represent milestones towards achieving each SO. Targets are reviewed carefully when new strategies are submitted to AFR/Washington for</p>	YES 12%

approval to ensure they are sufficiently ambitious. Data are reported against those targets and used to inform management decisions. Similarly ambitious targets exist for annual performance measures at the regional level. Baselines and targets for regional annual performance measures are contained in the Measures tab of this PART submission.

*Evidence:* 1) Example of a Performance Management Plan (PMP): South Africa SO 5 (entire document) 2) ADS 203.3.2, 203.3.3, 203.3.4, 203.3.5, 203.3.10 Performance Management, performance management plans, selecting performance indicators, and data quality. 3) Selected Mission Annual Report: Uganda FY 2004 p.8-19

- 2.5 **Do all partners (including grantees, sub-grantees, contractors, cost-sharing partners, and other government partners) commit to and work toward the annual and/or long-term goals of the program?** YES 12%

*Explanation:* At the OU-level, Strategic Objective Agreements (SOAGs) with host Governments outline the terms of agreement, including commitment to shared goals of USAID/AFR OUs and host country counterparts. Solicitation documents for contractors and grantees such as Request for Proposals (RFP), Request for Applications (RFA), or Annual Program Statements (APS) incorporate SO and/or program objectives. Respondents to the RFP or RFA must articulate how they will contribute to the achievement of AFR Mission Strategic Objectives. The extent to which they are able to help achieve these shared objectives and goals is evaluated in the technical merit criterion of the selection criteria. Grants and Contract Agreements reflect these shared commitments to common goals in the scope of work section. These commitments are likewise reflected in Contractors and Grantees annual work plans. By the terms and conditions of their agreements, contractors and grantees provide quarterly progress reports to OUs that document their results to date. USAID managers verify information in these reports through monitoring, site visits, and meetings. The information in the OU's PMP includes results reported and verified from contractors and grantees. All of these activities are designed and carried out to ensure that USAID partners commit to and work toward the annual and/or long-term goals of the program.

*Evidence:* 1) ADS 350.3.1-350.3.2 SOAGs 2) ADS 303.5.5 b and c - Evaluation criteria for grants 3) Example of Work Plan: TBD 4) Example of a Performance Management Plan (PMP): South Africa SO 5 (entire document) 5) Request for Proposal Number 690-04-0027- Malawi (Section C4- Targeted Results, Pages C3, C5-C14)

- 2.6 **Are independent evaluations of sufficient scope and quality conducted on a regular basis or as needed to support program improvements and evaluate effectiveness and relevance to the problem, interest, or need?** YES 12%

*Explanation:* Evaluations are intended to look at results achieved vs. targets/goals, program impact and effectiveness, and lessons learned. In the past five years approximately 154 evaluations have been conducted for the AFR Bureau's programs, including DA-funded activities. A break-out of evaluations of DA-only activities is not available because evaluations are often cross-sectoral and activities can involve multiple funding sources. Evaluations can be internal, external, collaborative or participatory, and are generally completed by entities outside of the AFR Bureau including independent private firms not directly associated with the activity or program, the Office of the Inspector General, or USAID's Center for Development Information and Evaluation (CDIE). The AFR bureau uses mid-term evaluation recommendations to introduce course corrections and final evaluations to determine whether further assistance should be directed to that technical sector. Evaluations are used to provide input to inform key management decisions, to evaluate performance data that indicates an unexpected result or finding which cannot be readily explained, to investigate customer or partner feedback that suggests there are implementation problems or unmet needs, to re-examine program sustainability, to assess cost-effectiveness or relevance, and to identify lessons learned.

*Evidence:* 1) AFR list of evaluations, as compiled by USAID's Center for Development Information and Evaluation 2) ADS 203.3.6 provides Agency guidance on evaluations

- 2.7 **Are Budget requests explicitly tied to accomplishment of the annual and long-term performance goals, and are the resource needs presented in a complete and transparent manner in the program's budget?** NO 0%

*Explanation:* The Africa Bureau's model for preparing budget requests, when fully implemented, will explicitly tie significant portions of the budget requests to accomplishment of annual and long-term performance goals as specified in the Bureau Program Budget Submissions (BPBS) and the Congressional Budget Justifications (CBJ). When a majority of Operating Unit Strategic Objectives are performance scored and factored into budget allocations, this portion of the PART will warrant a yes response. The Africa Bureau budget model contained in the BPBS documents how funding is to be reallocated within and between OUs based on performance. For example, each OU reviews (typically on a semi-annual basis) its performance vis-à-vis approved strategies. OUs prepare an Annual Report (AR) that summarizes program progress by Strategic Objective (SO) including: whether targets were met, reviewing the financial status of the SO, and planned resource requirements for the SO. The AFR Bureau leads a comprehensive review of all OU ARs, which may include other relevant Washington Offices. Informed by the review findings and recommendations and taking other factors into consideration such as country need and commitment, foreign policy considerations and administration priorities, and DA sector focus, the AFR Bureau decides on resource levels for each OU and rolls up the information for determining the aggregate BPBS for the Bureau. In terms of transparency, the CBJ presents in a succinct and transparent manner all the SOs by country, their progress to date, and the OU's requested funding levels by SO.

*Evidence:* 1) Congressional Budget Justification 2006 (pending) 2) FY 2006 Annual Budget Submission, p.1-4,8-10 3) Selected Mission Annual Report: Uganda FY 2004 (entire document) 4) 2006 Bureau Program Budget Submission: Africa Bureau Model p. 3-5

- 2.8 **Has the program taken meaningful steps to correct its strategic planning deficiencies?** YES 12%

*Explanation:* In response to the need for more centralized planning of the United States' foreign policy and development assistance programs, the Department of State and USAID jointly developed the Strategic Plan for Fiscal Year 2004 to 2009. For the first time in the history of both entities, strategic planning was combined to form a more coherent foreign policy and development strategy. The strategic objectives and specific long-term performance goals contained in the Strategic Plan constitute the top-level strategic planning framework for both agencies. All plans, targets, and results are tied to the Joint Strategic Plan. To facilitate performance monitoring and reporting under the Joint State/USAID strategies, the AFR Bureau is completing an extensive effort to align and harmonize a set of contextual and regional performance indicators that would provide valuable performance information to managers both in the field and at Washington headquarters. The AFR Bureau Framework will provide the vital link among joint State/USAID strategic objectives, strategic goals, performance goals, contextual and common performance indicators at the regional level, and annualized performance targets. USAID's long-term performance goals are

supported by outcome and/or output-related performance measures and regional indicators which are used to assess progress towards completion of the long-term goals, and allow Agency management to re-direct programs where necessary. At the OU-level, the regional performance indicators and targets, as well as baseline data, are or will be contained in every OU's Performance Management Plan (PMP). At the OU-level, there are identifiable long-term indicators and targets that are linked to the Strategic Objectives related to DA. These indicators and targets, as well as baseline data, are contained in every OU's Performance Management Plan (PMP). AFR conducts intensive reviews of OU strategies at least once every three years in accordance with USAID policy (ADS 203.3.10). This is a mechanism used by USAID to determine if the strategy is going as planned or whether the situation has evolved such that the strategy or implementation needs to be adjusted. (See answer to question 2.6.) This is a mechanism used by the AFR Bureau to redirect strategy when on-the-ground reality evolves in a different direction. After the review a management cable is sent to the OU outlining the results of the reviews. The annual report process serves to verify that corrective actions have been taken.

*Evidence:* 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, p.18-25 2) Joint Performance Plan, p.2-11, 36-62, 158-267 3) AFR Bureau Approved Bureau Framework Regional Indicators (pending) 4) Agency FY 2004 Performance and Accountability Report, p.10-12, 24-36, 98-107, 122-174 5) ADS 203 Performance Management (emphasis on ADS 203.2 through 203.3.5) 6) Example of AFR review of OU Strategic Plan: Eritrea Strategy Review Cable 7) ADS 203.3.10 Intensive Program Reviews 8) Draft USAID/Guinea Triennial Review Reporting Cable 9) Strategic Management Interim Guidance (entire document) 10) 2005 Annual Reporting Guidance, Section I, Sub-section A, Item 5 (Page 6) and Guidance Annex VIII, page 29

**Section 2 - Strategic Planning**      **Score**    88%

**Section 3 - Program Management**

**Number**    **Question**      **Answer**    **Score**

3.1      **Does the agency regularly collect timely and credible performance information, including information from key program partners, and use it to manage the program and improve performance?**      **YES**      **10%**

*Explanation:* USAID regularly collects timely and credible performance information from key program partners and from field missions. Funding recipients are required as part of their contractual or grant agreements to manage, monitor, and report performance information on a regular basis. This information is submitted to Operating Units (OUs) on a quarterly basis and aggregated into the Annual Report (AR) and Performance Management Plans for each activity annually. OUs indicate in the AR the status of targets for programs. The AFR Bureau, in turn, reviews OU performance via the AR review process. When targets are not met, various options may be considered depending on the specific circumstances and issues involved: the contract or grant agreement may be modified, additional funds may be delayed or not provided, management changes may be introduced, discussions may take place with other partners (other donors or host-country) regarding their commitment, etc. If goals are exceeded the OU will decide whether to set new targets or to focus on other interventions. The AR review process in turn feeds into Bureau decisions about programming, budgeting, and staffing during the Bureau Program Budget Submission (BPBS) process. Managing Agency funds in a timely way is also an important part of OU performance information. Based on Agency policy and AFR Bureau's analysis, an OU's program may not receive its full increment of funds in a subsequent year if it is determined that an unacceptable level of funds is still unspent (undisbursed). According to Agency policy, a program can only have unspent funds sufficient to cover expected disbursements for the next 12-18 months. This policy is strictly enforced by the AFR Bureau Development Planning Office.

*Evidence:* 1) Selected Mission Annual Report: Uganda FY 2004 (entire document) 2) AFR Bureau Annual Report Sector Summary: Health, Population, and Nutrition Results Reporting 3) Operating Unit Performance Management Plan (PMP), with South Africa as a sample (see sections on data analysis, data utilization, and dissemination for each indicator.) 4) USAID's ADS 202.3.6- Monitoring timeliness of key outputs 5) USAID adherence to 22 CFR 226, "Administration of Assistance Awards to US Non-governmental Organizations," Section 226.51, "Monitoring and Reporting Program Performance"; (from ADS 303.7 Mandatory Reference for Grants.) 6) 2005 Annual Reporting Guidance, Cover Memo and Section I, Sub-section A, Item 5 (Page 6) and Guidance Annex VII, (Pages 34-36) - completing performance measures table, including setting targets 7) DRAFT PPC Guidance on FY 2007 BPBS submissions, (Executive Summary and Overview, Page 3; Part 2- Budget and Performance Integration, Pages 7-8)

3.2      **Are Federal managers and program partners (including grantees, sub-grantees, contractors, cost-sharing partners, and other government partners) held accountable for cost, schedule and performance results?**      **YES**      **10%**

*Explanation:* Federal Managers at both the senior and programmatic level are held accountable for cost, schedule and performance results. Senior managers are responsible for broad program categories and are reviewed based on the performance of the entire portfolio under their purview. Annual portfolio reviews are used to assess progress in meeting goals, and each manager is assessed against their statement of duties on a semi-annual basis, which includes duties related to effectively managing their portfolio of projects. AFR-Washington Geographic Directors also exercise rigorous oversight of Senior Managers' performance in the field regarding cost, schedule and performance results on an even more frequent basis. At the contract management level, USAID cognizant technical officers (CTO) and program partners are held accountable for cost, schedule, and performance results. A cognizant technical officer (CTO) is designated for each AFR activity to manage contractors and grantees. CTO responsibilities include, among others, the technical review and approval of vouchers, monitoring contractor/grantee performance and financial status, and overseeing sub-agreements. The Agency recently re-established a training program to certify CTOs responsible for managing contracts and grants. The courses are designed to provide CTOs with the basic skills and knowledge to effectively carry out the role of a CTO. The Agency will soon require all current and potential CTOs to take this training program to assure consistent oversight of all Agency partners. Under USAID's personnel evaluation process, CTOs are evaluated for effective management of agreements, including the quality of technical guidance provided to contractors and grantees. The Agency also offers a course for CTO supervisors to enable them to more effectively provide on-the-job training and to better monitor and evaluate the performance of a CTO. Past performance of contractors and grantees is a criterion for all awards. Institutional capability and past performance are a large part of the selection criteria. Performance-based type of contracts and agreements are used to focus contractors on achievement of program results. Mid-term evaluations are also used to review performance to date and identify issues.

*Evidence:* 1) CTO responsibilities as defined in ADS 303.3 (Page 8) 2) DRAFT CTO Certification requirement agency notice (entire document) 3) Request for Proposal Number 690-04-0027- Malawi (Section C4- Targeted Results, Pages C6-C14; Section E3- Monitoring and Evaluation, Page E1; Section F- Deliveries or Performance, Pages F1-F5) 4) Mid-term evaluation of Zambia NRM program (Lessons Learnt and Conclusion and Recommendations Sections, Pages 29-34) 5) Course description of CTO Certification Programs (entire document)

3.3 Are funds (Federal and partners') obligated in a timely manner and spent for the intended purpose? YES 10%

*Explanation:* USAID DA funds are obligated in a timely manner and spent for the intended purpose. Obligations, among other financial data, are tracked via Phoenix, the Washington-based accounting system that is being rolled out worldwide over the next 14 months, and the Mission Accounting and Control (MACS) field-based legacy accounting system. AFR/DA funds are provided on an incremental, as-needed basis, with specific amounts determined by the budget and final Operating Year Budget setting processes. Once funds are obligated, OUs and the AFR Bureau monitor disbursements over the life of the program. Based on Agency policy and AFR Bureau's analysis, an OU's program may not receive its full increment of funds in a subsequent year if it is determined that an unacceptable level of funds is still unspent (undisbursed). According to Agency policy, a program can only have unspent funds sufficient to cover expected disbursements for the next 12-18 months. This policy is strictly enforced by the AFR Bureau Development Planning Office. Additionally, the Cognizant Technical Officer (CTO) of each grant, contract, or cooperating mechanism is responsible for monitoring this process. Finally, all OUs are required to prepare procurement plans that outline planned procurements and obligations and help ensure that funds are spent in a timely manner and for the intended purpose.

*Evidence:* 1) ADS 602 - Agency guidance regarding forward funding of programs. 2) ADS 202.3.8.3- Obligations Management 3) FY 2006 Annual Budget Submission (Page 6)

3.4 Does the program have procedures (e.g. competitive sourcing/cost comparisons, IT improvements, appropriate incentives) to measure and achieve efficiencies and cost effectiveness in program execution? YES 10%

*Explanation:* Missions undertake periodic portfolio reviews which provide a systematic and comprehensive view of the each activity at the Mission level. Through the strategic planning reform process, AFR is defining ways to improve operations and to help rationalize the allocation of scarce staff and operating expense (OE) resources. Specifically, the Africa Bureau is undertaking a Resource Harmonization exercise that will significantly reallocate staff and operating expenses across Missions in Africa. The results of this exercise are being taken into account during the development of the Agency Strategic Framework for Africa. Individual missions also have additional items flagged for improvement. Finally, AFR Bureau adheres to all Federal regulations on competition.

*Evidence:* 1) ADS 300 provides the overall guidance on procurement including competitive procurements (ADS 302.5.8 for Contracts and 303.5 for Grants). 2) AIDAR 706.501- Mandatory Reference for Competition 3) FY 2006 Annual Budget Submission (Pages 3-6)

3.5 Does the program collaborate and coordinate effectively with related programs? YES 10%

*Explanation:* The program collaborates and coordinates effectively with related programs across the United States Government (USG) and with other international donors. Most notably, the Department of State and USAID have recently developed joint goals at the Department/Agency level via the Joint State-USAID FY 2004-2009 Strategic Plan which formalizes the relationship highlighted in the answer to 1.3. Historically, State and USAID have planned and implemented programs collaboratively at the country level via the MPP process, which will now influence the Joint State/USAID Strategic Plan. Weekly country team meetings are held among USG agencies and regular coordination meetings with other donors in AFR countries with USAID missions. The Annual Budget Submission (ABS) process is a joint effort between State and USAID and is reflected in the FY 2006 ABS. Many USAID staff are "seconded" to other USG agencies and institutions and this helps with coordination. In addition, the AFR Bureau and its OUs collaborate and coordinate with related programs: participation in the Joint Management Council and Joint Policy Council; close working collaboration with State counterparts at the Bureau and country levels- especially through the MPP review process; memos of understanding with other Federal Agencies; staffing arrangements with other USG agencies; Inter-agency working groups such as with the State Counter-Terrorism task force; Consultative Groups with other donor agencies. Notably, AFRICA has developed a close working relationship with colleagues at the Millennium Challenge Corporation (MCC) as they begin to sign compacts in African nations (Madagascar being the first MCC compact ever) and in administration of the MCA Threshold Country program. Finally, the Bureau actively seeks public-private partner alliances in common development areas. Once these relationships are established they are evaluated and monitored through the annual program review process.

*Evidence:* 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009, (Messages from Secretary of State and USAID Administrator, Preface; Mission, Pages 1-4; Achieving Peace and Security, Pages 5-8; Advance Sustainable Development and Global Interests, Pages 18-29; Organizational Impacts, Pages 39-40) 2) Example of State Department Mission Performance Plan (MPP) - Kenya, FY 2006 (Chief of Mission Statement, references to USAID program partnerships throughout the text.) 3) Example of State Department Mission Performance Plan (MPP) - Democratic Republic of Congo, FY 2006 (Chief of Mission Statement, references to USAID program partnerships throughout the text.) 4) Examples of USAID Global Partnerships 5) Global Development Alliance (GDA) Brochure (entire document) 6) Example of public-private partner alliance: GDA alliance with the Chevron Texaco in Angola. 7) FY 2006 Annual Budget Submission. (Page 2) 8) State/USAID announcement of Joint Policy and Joint management Councils for cooperation and coordination between the agencies 9) MCA CEO Paul Applegarth testimony before HIRC on Joint USAID-MCC planning, May 19 2004 10) Assistant Administrator (AA) Pierson testimony to SFRC, March 2, 2005 (p. 11)

3.6 Does the program use strong financial management practices? NO 0%

*Explanation:* Through the Federal Managers Financial Integrity Act (FMFIA)/Management Control Review Committee process, USAID ensures that resources are protected against fraud, waste and abuse and that they achieve the results for which funds were appropriated. The process requires each OU in the AFRICA Bureau to do a self-assessment of the adequacy of management controls in all areas of agency operations including program, administrative, and financial management. Each OU submits an FMFIA memo to the AFRICA Bureau, which in turn submits a Bureau memo to the USAID Administrator. AFRICA grants and contractors are also subject to audits. Currently, the Phoenix system is used for Washington accounting and the MACS system for field accounting. Using two separate systems has created a disconnect between the two. However, USAID is rolling out the Phoenix system to the field, which should ensure streamlined accounting operations when the roll-out is complete. During FY 2005, USAID Ghana became the first Phoenix pilot mission in Africa, servicing accounting operations for USAID Ghana, the West Africa Regional Program, Liberia and Nigeria. When the rollout is completed, it is anticipated that the answer to this PART section will become yes/

*Evidence:* 1) Federal Manager's Financial Integrity Act (FMFIA) checklist 2) Africa Bureau FMFIA memo to USAID Administrator dated September 3, 2004 3) FMFIA Material Weaknesses reported by USAID AFRICA Missions for FY 2004 4) ADS 620 chapter - Financial management principles and standards (entire chapter) 5) Agency FY 2004 Performance and Accountability Report (Administrator's Letter, Pages 5-7; Chief Financial Officer's Letter, Pages 8-9; Management's Discussion and Analysis, Pages 72-89) 6) ADS 596 - Management Accountability and Control

3.7	<b>Has the program taken meaningful steps to address its management deficiencies?</b>	YES	10%
<p><i>Explanation:</i> The program has taken meaningful steps to address management deficiencies. For example, the FMFIA process requires each OU in the AFRICA Bureau to do a self-assessment of the adequacy of financial management controls in all areas of agency operations, including management of program assistance. Each OU submits an FMFIA memo to the Africa Bureau, which in turn submits a Bureau memo to the USAID Administrator. At the OU level, Africa Bureau missions address deficiencies or weaknesses that could appropriately be resolved at that level. Any significant deficiency or material weakness (whether new or unresolved from previous FMFIA reviews) is reported to the AFR Bureau and Included in the Bureau FMFIA memo to the Administrator. Steps for resolving the weakness are identified and a date proposed by which the weakness or deficiency will be corrected. Any deficiencies are also noted publicly in the Agency Performance and Accountability Report each year.</p> <p><i>Evidence:</i> 1) ADS 620, FMFIA checklist. 2) AFR Bureau FMFIA memo to USAID Administrator dated September 3, 2004 3) FMFIA Material Weaknesses reported by USAID AFR Missions for FY 2004 3) FY 2006 Annual Budget Submission (Pages 3, 5-6, 10, 12, 16, 21-23)</p>			
3.CO1	<b>Are grants awarded based on a clear competitive process that includes a qualified assessment of merit?</b>	NO	0%
<p><i>Explanation:</i> To the maximum extent permitted by legislation and statute, AFR Bureau contracts and grants are awarded competitively, except where supported by documentation approved by officials with authority to approve non-competitive awards. However, because of the above exceptions the percentage criteria for a yes response cannot be met. Where competitively awarded, Requests for Proposals (RFPs), Requests for Assistance (RFAs) and Annual Program Statements (APSs) are all posted publicly at <a href="http://www.fedgrants.gov">www.fedgrants.gov</a>. All decisions on grant and contract awards are properly documented (via selection memos, memos of negotiation, etc.). USAID Washington (via the Office of Acquisition and Assistance) reviews and provides oversight to ensure AFR adherence to Federal regulations and Agency guidance on competition. Procurement integrity is taken very seriously and all CTOs are trained in the specific regulations USAID employees are required to follow during the procurement process. Additionally, all USAID staff are required to take ethics training on a regular basis. This training includes instruction on procurement integrity.</p> <p><i>Evidence:</i> 1) ADS 300 provides the overall guidance on procurement including competitive procurements (ADS 302.5.8 for Contracts and 303.5 for Grants). 2) AIDAR 706.501- Mandatory Reference for Competition 3) FY 2006 Annual Budget Submission (Pages 3-6) 4) ADS 202.3.9 - Avoiding conflicts of interest, ensuring procurement integrity, complying with ethics rules, and meeting audit responsibilities (entire section) 5) Sample Annual Program Statement: Public-Private Alliances, <a href="http://www.fedgrants.gov/Applicants/AID/OP/WAS/GDA-05-001/listing.html">www.fedgrants.gov/Applicants/AID/OP/WAS/GDA-05-001/listing.html</a></p>			
3.CO2	<b>Does the program have oversight practices that provide sufficient knowledge of grantee activities?</b>	YES	10%
<p><i>Explanation:</i> The AFR program has significant oversight practices that provide sufficient knowledge of grantee activities. For example, a Cognizant Technical Officer (CTO) is designated for each program to manage contractors and grantees. CTO responsibilities include, among others, technical review and approval of vouchers, monitoring contractor/grantee performance and financial pipelines, and sub-awards. The Activity Manager and the SO Team Leader, who may or may not be the CTOs, also provide oversight. In addition, mission management is kept informed of program performance, progress, and issues via periodic portfolio reviews, staff meetings, etc. The AFR Bureau, in turn, is informed via the Annual Review process. The OU Agreement Officer is the mandatory control point of record for all official communications and contacts with the recipient that may affect the award budget, the program description or any terms and conditions of the award. Audits per OMB Circular A-133 or recipient-contracted audits are also conducted as required by policy or regulation.</p> <p><i>Evidence:</i> 1) CTO responsibilities as defined in ADS 303.3 (Page 8) 2) ADS 202.3.9.4- Conducting Audits 3) USAID FY 2004 Performance and Accountability Report (entire report)</p>			
3.CO3	<b>Does the program collect grantee performance data on an annual basis and make it available to the public in a transparent and meaningful manner?</b>	YES	10%
<p><i>Explanation:</i> [OMB NOTE DELETED] The AFR Bureau collects grantee performance data and makes it available to the public in print and via the internet. In preparing USAID's reporting documents, the data supplied by the various grantees and contractors are utilized to support AFR Bureau's analysis and program descriptions. Disclosure to the public is done in a number of different ways. For example, the USAID FY 2004 Performance and Accountability Report (PAR) publicly discloses program performance and financial information at the Agency level. The PAR is distributed in hard copy annually to Congress, OMB, USAID Missions, and partner organizations. It is also available to the general public via the Internet and by request on the USAID website. The Congressional Budget Justification (CBJ), available on the USAID web site) provides specific information to the public on AFR programs including information on SO performance and results, and by country (OU). The CBJ also indicates the various grantees and contractors working in the different SOs. USAID's Center for Development Information and Evaluation (CDIE), via the Development Experience Clearinghouse (DEC), makes evaluations of specific programs available to the public. Additionally, the Bureau of Policy and Program Coordination (PPC) is starting a new program to conduct and collect additional evaluations and train a new cadre of evaluation specialists in the Agency. Finally, the Africa Bureau Information Center (ABIC) maintains the USAID Africa Bureau public website. Many different publications and resources are available to the public on the site.</p> <p><i>Evidence:</i> [NEW EVIDENCE PROVIDED AS #7 BELOW] 1) USAID FY 2004 Performance and Accountability Report (entire report) 2) Congressional Budget Justification (CBJ) Africa overview, FY 2006 3) List of currently available Africa Bureau Program/Activity evaluations available to public through the Development Experience Clearinghouse (<a href="http://www.dec.org/partners/evalweb/">www.dec.org/partners/evalweb/</a>) 4) Evaluation of Recent USAID Evaluation Experience (Pages iii-iv, entire document) 5) Course descriptions for Evaluation course. 6) USAID Africa Bureau website: <a href="http://www.usaid.gov/locations/sub-saharan_africa/">www.usaid.gov/locations/sub-saharan_africa/</a> 7) Example link to CBJ information on performance at <a href="http://www.usaid.gov/policy/budget/cbj2006/afrao.html">www.usaid.gov/policy/budget/cbj2006/afrao.html</a> 8) Example link to Annual Report information on performance at <a href="http://www.dec.org/partners/ar05/index.cfm?fuseaction=ucar2005.showNar&amp;field=piped_summary&amp;countrycd=654&amp;historyIndex=1&amp;keyword=">www.dec.org/partners/ar05/index.cfm?fuseaction=ucar2005.showNar&amp;field=piped_summary&amp;countrycd=654&amp;historyIndex=1&amp;keyword=</a></p>			

Section 3 - Program Management Score 80%

#### Section 4 - Program Results/Accountability

Number	Question	Answer	Score
--------	----------	--------	-------

4.1	<b>Has the program demonstrated adequate progress in achieving its long-term performance goals?</b>	SMALL EXTENT	8%
<p><i>Explanation:</i> The DA program in Africa has received a great deal of high-level attention in recent years, with new initiatives annually being rolled out prior to and in G-8 Summits. The Africa Bureau has needed to respond to these, as well as congressional initiatives, with new strategic frameworks, objectives, and long-term performance measures. The DA program is on-track to meet long-term performance goals, including the regional goals and the country-level OU indicators previously developed. Data demonstrating that DA is on track to meet the regional goals is listed in the Measures tab. OUs use PMPs to define how data will be collected to measure program progress which is reported in the individual Mission's Annual Report (AR). OUs report in the AR whether targets are met or exceeded, in accordance with a scoring system maintained within the AR database to provide more informative performance information to management. Indeed in FY 2004 across USAID as a whole less than 10% of performance indicators were below targets.</p> <p><i>Evidence:</i> 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009 (entire document) 2) USAID FY 2006 Joint Performance Plan (entire document) 3) USAID FY 2004 Performance and Accountability Report (entire report) 4) Example of a Performance Management Plan (PMP): South Africa SO 5 (see specific updates throughout PMP) 5) Selected Mission Annual Report: Uganda FY 2004 (entire document) 6) Draft USAID/Guinea Triennial Review Reporting Cable</p>			
4.2	<b>Does the program (including program partners) achieve its annual performance goals?</b>	SMALL EXTENT	8%
<p><i>Explanation:</i> The AFR Bureau and its program partners generally achieve their annual performance goals. At the regional level, the AFR Bureau has specific, quantifiable annual targets and common regional indicators (contextual and performance as part of the Bureau Framework) for DA programs; these are shown in the Measures Tab of this PART submission. These measures are supplemented by country-level indicators which are contained in OU Performance Monitoring Plans (PMPs). The program is on-track to meet all of the annualized targets, including those which are joint targets with the Department of State and other program partners. At the country level, these measures are contained in OU PMPs. OUs report in their Annual Report whether targets are met, exceeded or not met. The PMP and Annual Report are the primary documents that show whether program performance is on track. These documents are, in large part, based on grantee and contractor (partner) information. In the case of DA, with very few exceptions, OUs at the country level report verified data that targets are met or exceeded. In FY 2004 across USAID as a whole less than 10% of performance indicators were below targets.</p> <p><i>Evidence:</i> 1) U.S. Department of State and U.S. Agency for International Development Strategic Plan: Fiscal years 2004-2009 2) USAID FY 2006 Joint Performance Plan (entire document) 3) AFR Bureau Approved Bureau Framework Regional Indicators 4) Example of a Performance Management Plan (PMP): South Africa SO 5 (see specific updates throughout PMP) 5) Selected Mission Annual Report: Uganda FY 2004 (entire document) 6) USAID FY 2004 Performance and Accountability Report (entire report)</p>			
4.3	<b>Does the program demonstrate improved efficiencies or cost effectiveness in achieving program goals each year?</b>	LARGE EXTENT	17%
<p><i>Explanation:</i> The AFR program has demonstrated improved efficiencies and cost effectiveness in achieving program goals each year. As part of the Strategic Framework process, AFR is developing a model to rationalize the allocation of scarce staff and operating expense resources. The results of this exercise and other management improvements are being factored into the development of the Framework. Additionally, AFR has significantly reduced the levels of obligated but undisbursed funds for individual OUs over the past several fiscal years.</p> <p><i>Evidence:</i> 1) FY 2006 Annual Budget Submission (entire submission) 2) CTO responsibilities as defined in ADS 303.3 (Page 8) 3) AFR Bureau FMFIA memo to USAID Administrator dated September 3, 2004 4) Resource Harmonization Overview 5) FY 2006 BPBS</p>			
4.4	<b>Does the performance of this program compare favorably to other programs, including government, private, etc., with similar purpose and goals?</b>	NA	0%
<p><i>Explanation:</i> The performance of the AFR/DA program compares favorably to other programs with similar purposes and goals. Because of its field presence and flexible programming, USAID is often cited by other donors and host governments for its ability to respond quickly, for both disaster assistance and standard international assistance, and for its leadership of country program coordination with other donors. The Development Assistance Committee (DAC) Organization for Economic Co-operation and Development (OECD) conducts periodic reviews to improve the individual and collective development co-operation efforts of DAC members. The policies and efforts of individual members are critically examined approximately once every four years. The DAC found that The United States has a substantial impact on promoting economic growth and reducing poverty in developing countries due to the large size of its economy, its ability to influence world opinion and action and its weight within the international donor community. Nonetheless, the DAC also found that improvements could be suggested given the inefficiencies of congressional earmarks and a highly dispersed set of implementing agencies. In 2001 the United States was the largest donor in the OECD's Development Assistance Committee (DAC) in volume terms, reporting net official development assistance (ODA) of USD 10.9 billion, more than one-fifth of the DAC total. USAID, while getting some criticism in the report, also received praise from the DAC for new ideas for partnerships like the Global Development Alliance and for USAID strategic planning processes. Congress also recognizes the performance of USAID. On April 5, 2005 the House passed by a vote of 401-0, a resolution commending the efforts by the armed forces and civilian employees of the State Department and the U.S. Agency for International Development in response to the earthquake and tsunami of December 26, 2004. Some AFR staff were released from their regular duties to help in the tsunami recovery efforts.</p> <p><i>Evidence:</i> 1) 2002 US Peer Review of Assistance by OECD-DAC, 2) House of Representatives Resolution 120 commending USAID staff on Asian Tsunami Response</p>			
4.5	<b>Do independent evaluations of sufficient scope and quality indicate that the program is effective and achieving results?</b>	LARGE EXTENT	17%
<p><i>Explanation:</i> Independent evaluations have shown that DA programs are effective and achieving results. Independent evaluations are conducted at the OU/Mission level for sector specific or strategic objectives. These evaluations are done by independent consultants, IG or GAO and are of sufficient scope and quality to determine that AFR Mission programs are accomplishing or have achieved their goals. Furthermore, the Agency is reinvigorating the evaluation process at USAID through a new evaluations</p>			



training course and an increased prominence on conducting evaluations. Evaluations accessible to the public are on the USAID website at: [www.dec.org/partners/eval.cfm](http://www.dec.org/partners/eval.cfm). One example of how USAID uses evaluations is through the Presidential Initiative to End Hunger in Africa. Strategic analysis is being done for each participating USAID Missions agricultural portfolio to examine ex post and ex ante impacts of all of the interventions in the portfolio. This allows the various interventions and investments to be compared for their prospective impacts on the objectives of raising incomes, increasing agricultural productivity, increasing trade, and reducing poverty. Further, we support and participate in multi-donor programs to examine the impact from alternative investment and development strategies for achieving MDG and specifically assessing the economic impacts of agricultural development efforts on the MDGs. For example, in Ethiopia various sectors (livestock, cereals, roots and tubers, coffee, etc??) as well as alternative approaches, e.g., market development, productivity development, etc.. were examined to determine which offered the greatest chance of stimulating rural growth, reducing poverty, and addressing nutritional needs.

*Evidence:* 1) AFR list of evaluations, as compiled by CDIE 2) Evaluation of Recent USAID Evaluation Experience (Pages iii-iv, entire document) 3) ADS 202.3.9.4- Conducting Audits 4) evaluations accessible to the public are on the USAID website at: [www.dec.org/partners/eval.cfm](http://www.dec.org/partners/eval.cfm) 5) Example evaluation for Agriculture project in Zambia: [www.dec.org/pdf\\_docs/POABX940.pdf](http://www.dec.org/pdf_docs/POABX940.pdf)

Section 4 - Program Results/Accountability Score 50%

- 
- [View this program's assessment summary.](#)
  - [Visit ExpectMore.gov](#) to learn more about program assessment and improvement by the Federal Government.
  - [Learn more](#) about detailed assessments.

Last updated: 01292008.2005FALL

## **Exhibit E**



## DETAILED INFORMATION ON THE PRESIDENT'S EMERGENCY PLAN FOR AIDS RELIEF: FOCUS COUNTRIES ASSESSMENT

- [View this program's assessment summary.](#)
- [Visit ExpectMore.gov](#) to learn more about how Federal Government programs are assessed and their plans for improvement.
- [Learn more](#) about detailed assessments.

<b>Program Code</b>	10004619										
<b>Program Title</b>	President's Emergency Plan For AIDS Relief: Focus Countries										
<b>Department Name</b>	Department of State										
<b>Agency/Bureau Name</b>	Department of State										
<b>Program Type(s)</b>	Competitive Grant Program										
<b>Assessment Year</b>	2005										
<b>Assessment Rating</b>	Moderately Effective										
<b>Assessment Section Scores</b>	<table> <tr> <th>Section</th><th>Score</th></tr> <tr> <td>Program Purpose &amp; Design</td><td>100%</td></tr> <tr> <td>Strategic Planning</td><td>100%</td></tr> <tr> <td>Program Management</td><td>90%</td></tr> <tr> <td>Program Results/Accountability</td><td>50%</td></tr> </table>	Section	Score	Program Purpose & Design	100%	Strategic Planning	100%	Program Management	90%	Program Results/Accountability	50%
Section	Score										
Program Purpose & Design	100%										
Strategic Planning	100%										
Program Management	90%										
Program Results/Accountability	50%										
<b>Program Funding Level (in millions)</b>	<table> <tr> <td><b>FY2007</b></td><td>\$2,848</td></tr> <tr> <td><b>FY2008</b></td><td>\$4,090</td></tr> <tr> <td><b>FY2009</b></td><td>\$4,540</td></tr> </table>	<b>FY2007</b>	\$2,848	<b>FY2008</b>	\$4,090	<b>FY2009</b>	\$4,540				
<b>FY2007</b>	\$2,848										
<b>FY2008</b>	\$4,090										
<b>FY2009</b>	\$4,540										

- [Ongoing Program Improvement Plans](#)
- [Completed Program Improvement Plans](#)
- [Program Performance Measures](#)
- [Questions/Answers \(Detailed Assessment\)](#)

### Ongoing Program Improvement Plans

Year Began	Improvement Plan	Status	Comments
2007	Implementing the "Staffing for Results" (SFR) model, which means having in place a fully functioning, interagency country team that jointly plans, implements, and evaluates its programs with appropriate technical leadership and	Action taken, but not completed	The goal of SFR is to institutionalize a structure, with defined roles, responsibilities, and processes that support interagency planning, implementation, and evaluation to reach Emergency Plan goals. Many countries have started their SFR analyses. In their FY 2008 COPs, countries were asked to describe their SFR processes, their successes, and

	management oversight in light of program size, number and capacity of local partners and technical experts, country working conditions, and other relevant factors.		what obstacles need to be overcome to fully implement SFR.
2007	Working to reduce the planning and reporting burden of countries that are demonstrating high performance.	Action taken, but not completed	OGAC introduced two ways to reduce the planning and reporting burden for country teams. 1) High-performing country teams were not required to complete activity narratives in their FY 08 Country Operational Plans (COPs) for those program areas that met a minimum performance criteria. 2) The mid-year progress report was reduced to collect information on the 7 country level indicators only, compared to the total 46 indicators collected in last year's mid year report.
2007	Developing a standardized process for country teams' partner programmatic and financial performance assessments (portfolio reviews).	Action taken, but not completed	OGAC requires country teams to evaluate partner performance on a regular basis. However, in an effort to standardize the reviews, OGAC is developing a common form for country team use. In January, we will ask countries that voluntarily used the form for FY 08 COP planning to provide comments as pilot testers. We will work with all countries to finalize the form and guidance for use in FY 2009 COP planning.

### Completed Program Improvement Plans

Year Began	Improvement Plan	Status	Comments
2006	The Office of the Global AIDS coordinator will establish and implement a system to capture expenditures (outlays) by country.	Completed	OGAC submitted its first report to OMB on country outlays on 2/7/07.
2006	The Office of the Global AIDS coordinator is urged to undertake an internal review of budget allocations to focus countries based on performance data and pipeline capacity.	Completed	To increase the tie between performance and budget, OGAC used both country performance data as well as pipeline data to develop the FY 2007 country budgets. OGAC collected partner financial performance assessment information in the Semi-Annual Progress Results in May 2007.

### Program Performance Measures

Term	Type	
Annual	Output	<b>Measure:</b> Number of individuals provided with general HIV-related palliative care/ basic health care and support during the reporting period. Please note that beginning in 2006, both target and actual number include TB (2004 and 2005 did not include TB in either target or

actuals.)

*Explanation:* This measure is an example of a program level indicator and is standardized across the 15 focus countries. Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2004	Baseline	854,800
2005	1,662,820	1,397,555
2006	2,496,157	2,464,063
2007	3,130,341	3,901,543
2008	5,001,128	
2009	7,234,041	

Annual Output

**Measure:** Number of pregnant women receiving PMTCT services, including counseling and testing during the reporting period.

*Explanation:* This measure is an example of a program level indicator and is standardized across the 15 focus countries. The actual for 2005 is from mid-year FY 2005. The target is for all of FY 2005. The data for FY05 represents Initial Information received from the field and will be final in the annual report to Congress in January 2006.

Year	Target	Actual
2004	Baseline	1,271,300
2005	2,372,913	1,957,932
2006	2,100,292	2,837,409
2007	3,650,949	4,011,797
2008	5,411,708	
2009	6,655,897	

Annual Efficiency

**Measure:** Ratio of management and staffing costs to total program costs in the 15 PEPFAR focus countries (New measure, added February 2008)

*Explanation:* The President's Emergency Plan for AIDS Relief has set an annual goal of limiting management and staffing (M&S) costs to 7% of individual country budgets. This measure evaluates the aggregate results across the 15 PEPFAR focus countries based on the Country Operational Plans for the upcoming fiscal year. M&S includes the majority of staff who provide oversight of or services to the administration of the program. The salaries for staff who work predominately in one or two technical program areas are considered to be program costs and are not included in M&S. Despite the substantial annual increase in PEPFAR funding to the 15 focus countries, the percentage that is M&S costs has decreased.

Year	Target	Actual
2005	7%	6.81%
2006	7%	6.93%
2007	7%	4.98%
2008	7%	
2009	7%	

**Annual**      **Output**      **Measure:** Number of individuals who received counseling and testing during the reporting period (counseling includes the provision of test results to clients).

*Explanation:* This measure is an example of a program level indicator and is standardized across the 15 focus countries. Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2004	Baseline	1,791,900
2005	3,982,958	4,653,257
2006	5,590,762	6,426,120
2007	8,413,819	10,580,699
2008	12,194,714	
2009	15,947,448	

**Annual**      **Output**      **Measure:** Number of pregnant women provided with a complete course of antiretroviral prophylaxis during the reporting period (this is a subset of women receiving PMTCT services, including counseling and testing).

*Explanation:* This measure is an example of a program level indicator and is standardized across the 15 focus countries. Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2004	Baseline	125100
2005	121439	122,717
2006	272,657	285,640
2007	351,059	294,054
2008	548,013	
2009	647,986	

Long-term
Output

**Measure:** Estimated number of HIV infections prevented in the focus countries.

*Explanation:*Prevalence data released by UNAIDS in 2003 indicates that prevalence in PEPFAR focus countries ranges from a low of 0.4% in Vietnam to a high of 37.3% in Botswana. PEPFAR hopes to reduce these HIV prevalence rates, and avert 7 million infections by 2010, however calculating the number of infections averted is complicated due to the number of variables that must be factored into the equation. The Census Bureau has developed an algorithmic model to estimate the number of cases averted. This project is moving forward and to date the Census Bureau has extrapolated from 2003-2004 available pre-2005 ANC surveys and demographic data that an estimated 14,722,176 new infections would have resulted from 2005 through 2010 given pre-PEPFAR intervention levels. By the beginning of 2007 they hope to have 2005 ANC survey prevalence data for most of the focus countries, allowing for comparison between the estimated 2005 pre-intervention prevalence and the 2005 actual estimated prevalence. The difference between these two numbers will provide an estimate of the number of cases averted in 2005. Given the data requirements for this calculation, results will be available approximately 1-2 years after the reported year.

Year	Target	Actual
2004	Baseline	TBD
2007	2,800,000	Avail. FY 2009
2010	7,000,000	

Long-term
Output

**Measure:** Number of individuals infected and affected by HIV/AIDS, including orphans and vulnerable children, receiving care and support services.

*Explanation:*Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2004	Baseline	1,727,100
2005	2,600,000	2,940,677
2006	4,300,000	4,464,750
2007	5,500,000	6,637,585
2008	8,200,000	
2009	10,000,000	

Annual
Outcome

**Measure:** Number of HIV-infected individuals (diagnosed or presumed) who received clinical prophylaxis and/ or treatment for TB during the reporting period.

*Explanation:*This measure is an example of a program level indicator and is standardized across the 15 focus countries. Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents

a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2004	Baseline	241,000
2005	337,242	323,144
2006	312,449	301,583
2007	426,626	367,635
2008	479,146	
2009	616,988	

Long-term Output

**Measure:** Number of people receiving HIV/AIDS treatment

*Explanation:* Baseline 2003 numbers are an aggregate of totals from different populations-based studies conducted from 1998-2002 in the 14 original focus countries. Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2003	Baseline	66,911
2004	200,000	235,000
2005	470,000	401,233
2006	741,000	822,000
2007	1,200,000	1,358,375
2008	1,700,000	
2009	2,000,000	

Annual Output

**Measure:** Number of Orphans and Vulnerable Children (OVC) being served by an OVC program.

*Explanation:* This measure is an example of a program level indicator and is standardized across the 15 focus countries. Actual numbers provided during the Spring update represent a mid-year progress report (through March 31 of the fiscal year) and are not intended to be compared to the target, which represents a full year. The full-year actual numbers are updated in the Fall update and in The President's Emergency Plan for AIDS Relief Annual Report to Congress each January.

Year	Target	Actual
2004	Baseline	630,200
2005	1,393,322	1,219,978
2006	2,423,408	2,000,747
2007	3,088,766	2,736,042
2008	3,291,651	



2009 4,454,217

**Questions/Answers (Detailed Assessment)**

<b>Section 1 - Program Purpose &amp; Design</b>			
<b>Number</b>	<b>Question</b>	<b>Answer</b>	<b>Score</b>
1.1	<p><b>Is the program purpose clear?</b></p> <p><i>Explanation:</i> The purpose of the President's Emergency Plan for AIDS Relief, a five year, \$15 billion initiative, is to turn the tide against the global AIDS pandemic. Within the Emergency Plan, the purpose of the focus country effort is to bring to scale national HIV/AIDS treatment, care and prevention programs in 15 nations of the world where the need is most urgent.</p> <p><i>Evidence:</i> 1) Authorizing legislation PL 180-25 (H.R. 1298, S. 250) 2) The President's Emergency Plan for AIDS Relief: U.S. Five-Year Global Strategy, February 2004. 3) FY 2005 Congressional Budget Justification (Overview) 4) State-USAID Strategic Plan 2004-2005, pp.4, 24-25.</p>	YES	20%
1.2	<p><b>Does the program address a specific and existing problem, interest, or need?</b></p> <p><i>Explanation:</i> The 15 focus countries of the Emergency Plan represent at least 50% of HIV infections worldwide. Among these nations, HIV prevalence runs as high as 21.5% in South Africa; and in Botswana, the prevalence rate ranges from a low of 0.4% in Vietnam to a high of 37.3% in Botswana, based on 2003 UNAIDS data. All but one of the focus countries was included in the President's previously announced Mother-and-Child HIV Prevention Initiative. Key factors that contribute to the U.S. Government (USG) focusing on these nations include the severity of the magnitude of the epidemic, the strength of the USG in-country presence, and the political commitment of the host country government at the national or sub-national level. While health services in these countries, including treatment of HIV/AIDS and its associated illnesses, are limited, they are scaleable under Emergency Plan approaches, e.g., expanding access to health care services using the network model.</p> <p><i>Evidence:</i> 1) The President's Emergency Plan for AIDS Relief: U.S. Five-Year Global Strategy, February 2004. 2) AIDS Epidemic Update, December 2004, Joint United Nations Programme on HIV/AIDS (UNAIDS), World Health Organization (WHO). 3) "3 by 5" Progress Report December 2004, UNAIDS and WHO.</p>	YES	20%
1.3	<p><b>Is the program designed so that it is not redundant or duplicative of any other Federal, state, local or private effort?</b></p> <p><i>Explanation:</i> While other international efforts share in the purpose of the Emergency Plan (to turn the tide of HIV/AIDS) and also seek to serve its beneficiaries (people living with and impacted by HIV/AIDS), the Emergency Plan is not redundant or duplicative of any other bilateral or</p>	YES	20%

multilateral efforts that have similar goals and objectives. To ensure that this program was both successful and non-duplicative of existing USG programs, the U.S. Global AIDS Coordinator (GAC) was specifically authorized in PL 108-25 to coordinate the activities of all USG agencies responding to the International HIV/AIDS epidemic. In the focus countries during the first year of implementation, the USG in-country teams developed and implemented a unified strategy and voice in working with host governments and local nongovernmental partners. To ensure coordination with other international donors, the USG in-country team meets regularly with other bilateral and multilateral donors, the relevant host Government offices, and other implementing partners. This coordination on the ground avoids duplication of assistance efforts, eliminates program redundancies, and promotes country program synergies.

*Evidence:* 1) The President's Emergency Plan for AIDS Relief: U.S. Five-Year Global Strategy, February 2004. 2) Engendering Bold Leadership: The President's Emergency Plan for AIDS Relief First Annual Report to Congress, Chapter 10, March 2005. 3) Authorizing legislation PL 180-25 (H.R. 1298, S. 250) 4) USAID Automated Directives System (ADS), Sections 201.3.6 and 201.3.7 (guidance for the preparation of strategic plans), 3/1/2004. 5) USAID ADS, Section 201.3.9.2 - Guidance on donor coordination analysis in the strategic planning phase, 1/31/2003. 6) HHS/CDC International Strategic Information and Monitoring and Evaluation Field Officer Orientation: Participant Guide and Case Studies, August 2004.

1.4	<b>Is the program design free of major flaws that would limit the program's effectiveness or efficiency?</b>	YES	20%
-----	--	-----	-----

*Explanation:* The authorizing language for the Emergency Plan for AIDS Relief included several earmarks specifying minimum percentages of funding to certain aspects of the program. While these earmarks are not necessary, they do not severely impede the implementation of the program.

*Evidence:* 1) Authorizing legislation PL 180-25 (H.R. 1298, S. 250)

1.5	<b>Is the program design effectively targeted so that resources will address the program's purpose directly and will reach intended beneficiaries?</b>	YES	20%
-----	--	-----	-----

*Explanation:* For each of the 15 focus countries, the Emergency Plan in-country team has developed a five-year HIV/AIDS country strategy in coordination with the host government's National HIV/AIDS strategy that enables the program to adapt to the individual needs and challenges of that nation. The annual Country Operational Plans (COP) provide the Emergency Plan with distinct details on activities and funding for each focus country. By linking the Emergency Plan's five-year country strategies explicitly to the annual COP process, the Emergency Plan ensures that it effectively targets its resources to reach the intended beneficiaries, e.g., persons living with and impacted by HIV/AIDS, persons at risk of contracting HIV, and indigenous non-governmental organizations.

*Evidence:* 1) The President's Emergency Plan Country Operational Reporting System (COPRS) description. 2) Ethiopia's Five-year Country Strategy FY 2004-2008, October 2004. 3) FY 2005 Ethiopia Country Operational Plan (COP), Executive Summary.

**Section 1 - Program Purpose & Design**      **Score** 100%

**Section 2 - Strategic Planning**

Number	Question	Answer	Score
--------	----------	--------	-------

2.1	<b>Does the program have a limited number of specific long-term performance measures that focus on outcomes and meaningfully reflect the purpose of the program?</b>	YES	12%
-----	--	-----	-----

*Explanation:* In the focus countries of the Emergency Plan, the long-term goals are to support treatment to 2 million HIV infected people, support the prevention of 7 million new infections, and support care for 10 million people infected and affected by HIV/AIDS (2-7-10), including orphans and vulnerable children. The 2-7-10 goals originated from data compiled in 2002 by a technical team from UNAIDS, WHO, the Futures Group, and Imperial College that estimated the global funding needs for HIV/AIDS programs and the impact that could be achieved from that funding. The treatment and care goals are to be met in 2008, and the prevention goal is to be met in 2010. Impact indicators (e.g., percent of young people age 15-24 that are HIV-Infected) are being collected that will monitor the Emergency Plan's impact on turning the tide of AIDS. In addition, the Emergency Plan's 2-7-10 goals support and contribute to a set of global outcome/impact indicators which reflect all in-country partner programs, including monies from the Global Fund, UNAIDS, and other international donors.

*Evidence:* The 2-7-10 goals of the Emergency Plan for AIDS Relief have been public and consistently used from the time of the President's 2003 State of the Union Address where the Plan was announced. These goals are included in every document both internal and external produced by the Office of the Global AIDS Coordinator and included in both HHS and USAID performance plans or strategies.

2.2	<b>Does the program have ambitious targets and timeframes for its long-term measures?</b>	YES	12%
-----	---	-----	-----

*Explanation:* The 2-7-10 goals are ambitious targets to be met in the five-year (seven-year for prevention goal) scope of the Emergency Plan. In the focus countries, baselines were established as follows: prevention (2002-2003); numbers of persons on treatment based on estimates from the 14 original focus countries (2003); and care (2004). Based on these overall 2-7-10 goals and baselines, each focus country developed a five-year strategy and annually submits a COP to the Office of the U.S. Global AIDS Coordinator (OGAC) for review and approval that contains the annual program level country targets that contribute to achieving the long-term program goals. Annual Emergency Plan targets towards achieving the long-term 2-7-10 goals have also been set and can be reviewed in the Global AIDS Coordinator's Bureau Performance Plan.

*Evidence:* The baselines for prevention and treatment were established before the start of implementation of the Emergency Plan. The long-term target for persons receiving treatment represents an increase of 30 times the baseline. The prevention baseline is built off of prevalence rates. By supporting the prevention of 7 million new infections by 2010, 60% of new HIV infections in the focus countries would be prevented. While the care baseline was established during the first year of implementation, the target ambitiously calls for a 400% increase in the number of people receiving care and support services, including orphans and vulnerable children.

2.3	<b>Does the program have a limited number of specific annual performance measures that can demonstrate progress toward achieving the program's long-term goals?</b>	YES    12%
-----	---	------------

*Explanation:* Annual performance measures are the foundation for achieving the 2-7-10 long-term goals. The 2-7-10 goals have annual targets that build toward the long-term goals. In addition to the annual targets there are 15 programmatic indicators that are measured annually and characterized by prevention, treatment, care, and the components necessary to build sustainable capacity. These indicators include programs/services such as the Prevention of Mother-to-Child Transmission (PMTCT), antiretroviral therapy (ART), palliative care and orphans and vulnerable children (OVC), abstinence and 'be faithful' prevention services, and strategic information and policy system strengthening. Countries make projections as to the number of programs/services they will provide in the COP process just prior to the start of a new budget year. OGAC has in place an annual efficiency measure for the focus countries: dollar cost per target reached, which is a weighted cost of prevention, treatment, and care dollars. The President and the GAC have committed publicly to assisting a certain number of people in the prevention, care, and treatment of HIV/AIDS and doing so in a cost effective manner.

*Evidence:* The annual goals are built into the Emergency Plan Indicators, Reporting Requirement and Guidelines. These measures are also published as part of the Emergency Plan Annual Report.

2.4	<b>Does the program have baselines and ambitious targets for its annual measures?</b>	YES    12%
-----	---	------------

*Explanation:* The Emergency plan set annual targets for the 2-7-10 goals in June 2004 to be achieved in June 2005 (Year One Targets). These overall baselines and targets were reported on at the end of March 2005. Targets were set also for the end of each fiscal year 2005 through 2008. The program level output indicators that are also reported annually have a baseline established in 2004 since this is the first year that data was collected in this level of detail on the 15 core indicators. OGAC is able to successfully measure progress towards the 2-7-10 goals of the Emergency Plan biannually based on reports submitted by the country teams. The targets are reviewed to assure they reflect a measurable outcome as well as consistent movement towards achieving the long-term goals of the Emergency Plan.

*Evidence:* Emergency Plan 2-7-10 prevention, treatment and care goals were set annually beginning in June 2004 with Year One targets and results collected at the end of March 2005. Targets were also set for the end of the fiscal years 2005 through 2008, as referenced in the programs' planning documents. The program level indicators set baselines for prevention, care, and treatment in 2004, and first year targets were set for 2005. The first results to measure the accomplishment will be in September 2005.

2.5	<b>Do all partners (including grantees, sub-grantees, contractors, cost-sharing partners, and other government partners) commit to and work toward the annual and/or long-term goals of the program?</b>	YES    12%
-----	--	------------

*Explanation:* In-country coordination and planning between partners at all levels is a founding implementation and management principle of the Emergency Plan. All focus countries have a five-year strategic plan that was developed in consultation with relevant USG entities, host-country governments, non-governmental organizations (NGOs) including faith based organizations, the corporate sector, multilateral institutions, and other in-country stakeholders. The Emergency Plan recognizes that the host countries must own the fight against HIV/AIDS; thus, the Emergency Plan's approach to support host countries' national strategies, including building local capacity for sustainable HIV/AIDS programs.

*Evidence:* Evidence for this answer can be found in the following documents: 1) Uganda Five-Year Strategic Plan FY2004 - 2008. 2) The Ethiopia Five-Year Strategy and FY05 COP 3) The President's Emergency Plan for AIDS Relief. U.S. Five-Year Global HIV/AIDS Strategy, Chapter 9, February 2004. 4) USAID ADS 350 - Grants to Foreign Governments, 7/23/2003. 5) USAID ADS 303.5.5b and 303.5.5c, 7/23/2002. 6) USAID Task Order Proposal Request for Preventing the Medical Transmission of HIV: Reducing Unsafe and Unnecessary Injections in Selected Countries of Africa and the Caribbean. 7) USAID Population, Health and Nutrition Technical Assistance Support Contract, 9/30/2003.

2.6	<b>Are independent evaluations of sufficient scope and quality conducted on a regular basis or as needed to support program improvements and evaluate effectiveness and relevance to the problem, interest, or need?</b>	YES    12%
-----	--	------------

*Explanation:* The Institute of Medicine (IOM) and the General Accounting Office (GAO) evaluations have either been completed, or are underway, that cover the scope of the Emergency Plan in the focus countries including treatment, care, and prevention programs. IG reports from USAID and the State Department have, or are also, evaluating management and value questions. Finally, the Office of the U.S. Global AIDS Coordinator (OGAC) has retained an independent contractor to evaluate compliance with USG "ABC" (Abstinence, Be Faithful and correct and consistent Condom use) policy, movement towards use of indigenous partners, performance and results achievement against targets, and reasonableness of cost.

*Evidence:* 1) List of Ongoing and Recently Completed Audits and Evaluations of the President's Emergency Plan. 2) GAO Audit, Titled: Global HIV/AIDS Epidemic: Selection of Antiretroviral Medications Provided under U.S. Emergency Plan is Limited, January 2005. 3) GAO-04-784: U.S. AIDS Coordinator Addressing Some Key Challenges to Expanding Treatment, but Others Remain.2004. 4) Institute of Medicine. Scaling Up Treatment for the Global AIDS Pandemic: Challenges and Opportunities. July 2004. "

2.7	<b>Are Budget requests explicitly tied to accomplishment of the annual and long-term performance goals, and are the resource needs presented in a complete and transparent manner in the program's budget?</b>	YES	12%
-----	--	-----	-----

*Explanation:* The Office of the Global AIDS Coordinator develops budget requests and analysis of policy impacts taking into account accomplishment of long-term and annual goals both through internal and external presentations. The internal interagency Emergency Plan strategic planning process requires that country budget requests be tied explicitly to the strategic performance planning process. These internal discussions of budget and performance are the basis of external budget requests.

*Evidence:* Internal budget analysis was provided demonstrating funding scenarios and the impact they would have on the accomplishment of long-term and annual goals. OGAC has developed an FY 2007 template tying budget request to performance. The Country Operational Plans also require that funding requested is tied to activities that will accomplish the program's goals.

2.8	<b>Has the program taken meaningful steps to correct its strategic planning deficiencies?</b>	YES	12%
-----	---	-----	-----

*Explanation:* There are no strategic planning deficiencies identified in this section that require programmatic corrections.

*Evidence:* Evidence is unnecessary.

<b>Section 2 - Strategic Planning</b>	<b>Score 100%</b>
---------------------------------------	-------------------

### Section 3 - Program Management

Number	Question	Answer	Score
3.1	<b>Does the agency regularly collect timely and credible performance information, including information from key program partners, and use it to manage the program and improve performance?</b>	YES	10%

*Explanation:* The program collects performance data from grantees and the field and uses the data to manage and improve program performance. The program has established program reporting, monitoring and surveillance systems. The program collects data through country plans and reports and uses the data to make program and funding decisions by country. Country Operational Plans (COPS) include specific details on

proposed accomplishments and deliverables. The plans are used to manage the program and improve performance. For grants and contracts, program partners commit to and report on performance goals that are approved in the annual COP. Additional information on program activities and performance is collected through program audits, field visits, outcome indicators, progress indicators, and obligation reports.

*Evidence:* Evidence includes the annual report to Congress, Country Operational Plans and annual reports, grant guidance materials, and sample country reviews. Examples of cost effectiveness studies that the program has used to manage and improve performance include: cost effectiveness of tuberculin skin testing for HIV infected persons in Uganda, effect of co-trimoxazole prophylaxis in HIV infection and the cost effectiveness of home-based chlorination and safe water storage among HIV-affected families.

3.2	<b>Are Federal managers and program partners (including grantees, sub-grantees, contractors, cost-sharing partners, and other government partners) held accountable for cost, schedule and performance results?</b>	YES	10%
-----	---	-----	-----

*Explanation:* SES and senior program managers for the program have performance-based work plans. As noted in Section I, program design is strong in the reliance on existing structures and implementing agencies and appropriations for the focus countries are provided through multiple accounts. However, this arrangement requires additional efforts in oversight of performance and financial data that will require continued effort. The program is working to establish clearly defined and quantifiable performance standards for the majority of program managers within the State Department, HHS and USAID. The program establishes performance standards for partners, including grantees and country level teams. Project officers receive annual reports documenting progress that could be the basis for not extending additional funding due to poor performance. Program staff review country spending trends and, where indicated, request additional justification or reallocate funds. Past performance is a criterion in the awards from both implementing agencies.

*Evidence:* Evidence includes copies of workplans for SES and senior managers, technical reviews, grant program announcements, administration manuals and Country Operational plans. Country Operational plans provide detailed information on proposed activities and deliverables. For the next General Service (GS)/Foreign Service(FS) rating period, HHS and USAID will update these work plans so that they are performance based and tie directly to relevant staff roles and responsibilities.

3.3	<b>Are funds (Federal and partners') obligated in a timely manner and spent for the intended purpose?</b>	YES	10%
-----	---	-----	-----

*Explanation:* The program obligates funds in a timely manner and for the intended purpose. Funds are largely obligated according to planned schedules with a limited amount of program funds remaining at the end of the year. The funding plans at the headquarters level emphasize rapid

distribution of funds to the field. In the field, country programs may obligate funds more slowly depending on the maturity and position of the country program. The program monitors any large sums of unobligated balances in the field as a possible indication that there are problems meeting proposed goals and objectives. The program presents obligations as a percentage of what is available and outlays as a percentage of obligations by appropriation. As is described further below, the program is also actively working to improve reporting of final expenditures by tracking outlays by country and comparing those outlays against the intended use.

*Evidence:* Evidence includes the Annual Report to Congress, headquarter reports and obligations and outlay data from the program. The Emergency Plan received the first appropriation in January 2004 and released the first \$350 million for the focus countries in February 2004 and an additional \$515 million in June 2004. The program's obligation data is collated quarterly by country for field obligations and by area for central programs.

3.4	<b>Does the program have procedures (e.g. competitive sourcing/cost comparisons, IT improvements, appropriate incentives) to measure and achieve efficiencies and cost effectiveness in program execution?</b>	YES	10%
-----	--	-----	-----

*Explanation:* The program has adopted an efficiency measure of the cost per target reached that can be useful to monitoring program performance at the country and aggregate level. The program monitors overhead costs in the Coordinator's office and implementing agencies and has taken steps to avoid rapid scale up of Federal FTE positions in the implementing agencies. The program improves efficiency in the field, in part, through the "Three Ones" process described in the response to question 3.5. The implementing agencies have some procedures in place, including competitive sourcing studies and mission reviews, to improve overall efficiency. The program is working on systems for supply chain management and establishing an IT contract. Although the IT evaluation has been slow in development, the Coordinator's office has committed to ensuring that the recommendations of the evaluation maximize existing USG IT models and capabilities.

*Evidence:* The program adopted an efficiency measure for the focus countries: dollar cost per target reached, which is a weighted cost of prevention, treatment, and care dollars. An example of evidence to demonstrate efficiency is the establishment of a web based Country Operation plan database system. CDC has taken a number of steps to improve efficiency including competitive sourcing studies and consolidations of IT, budget execution, travel processing and training. USAID is using Mission Management Assessments to review activities by region. This effort led to savings through the consolidation of activities in the Caribbean region.

3.5	<b>Does the program collaborate and coordinate effectively with related programs?</b>	YES	10%
-----	---	-----	-----

*Explanation:* The program emphasizes coordination and collaboration between the Coordinator and the implementing agencies that make up the



program, between the implementing agencies, between the program and other international actors such as the Global Fund and World Bank, and between the USG in the field and the local governments and non-governmental entities. Ensuring stability and sustainability of local activities funded by the program and its bilateral and multilateral partners will require continued success in collaborative planning. Some improvements could be made in collaboration with the State Department specifically in the areas of human resources and legislative affairs.

*Evidence:* One prominent example of collaboration between the program and external partners is the program has agreed to a set of principles with UNAIDS, the World Bank and the U.K. Department for International Development known as the "Three Ones." These principles include the mutual agreement to one HIV/AIDS action framework to help coordinate the work of all partners in a country, one national AIDS coordinating authority in the country and one agreed upon country-level monitoring and evaluation system. According to data from the program, in the first eight months of implementation in the focus countries, 80% of the 1,200 partners working in the field were indigenous organizations.

**3.6 Does the program use strong financial management practices? NO 0%**

*Explanation:* The program has mechanisms for financial accountability and control, but does not yet meet the standards of this question for strong financial management practices. As is described further below, HHS/CDC has implemented a new financial management system that is designed to eliminate previously identified weaknesses in the legacy system. USAID is also working to adopt a new financial management system in all overseas missions and headquarters. When all systems are in place and evidence is available that the new systems have strengthened financial management for the agencies and are resolving previously identified weaknesses the response to this question will be yes.

*Evidence:* Evidence includes prior year performance and accountability reports, reports on material weaknesses, financial management reports and financial management procedures.

**3.7 Has the program taken meaningful steps to address its management deficiencies? YES 10%**

*Explanation:* The program is taking steps to address weaknesses identified in this section. CDC recently adopted a new financial management system and is also establishing a financial management guide for countries. USAID is in the process of implementing a new accounting system at headquarters and in all of its missions. The program is developing a plan for collecting and reporting outlay data by country. The program is also extending performance results information into the evaluations of additional Federal General Service and Foreign Service managers.

*Evidence:* Evidence includes internal planning documents and implementation plans for the financial management systems. HHS's financial management guide will address budget management, travel approvals and vouchers, grants management, ICASS and securing of

assets. GAO has noted the challenges facing the Coordinator expanding treatment in the focus countries and documented early successes of Emergency Plan Implementation (see GAO-04-784).

3.CO1	<b>Are grants awarded based on a clear competitive process that includes a qualified assessment of merit?</b>	YES 10%
-------	---	---------

*Explanation:* Grants are largely awarded according to a competitive process based on merit. The program uses independent review and ranking of applicants to make award decisions.

*Evidence:* Both HHS and USAID announce competition for global AIDS funds by placing program announcements in the Federal Register: ([www.gpoaccess.gov/fr/Index.html](http://www.gpoaccess.gov/fr/Index.html)) and the Catalogue of Federal Domestic Programs: ([www.cfda.gov/public/faprs.html](http://www.cfda.gov/public/faprs.html)). Awards are made through an objective review process or special emphasis panel. Continuation awards go through a technical review process. Overall, more than 90% of extramural funds for the program are awarded competitively.

3.CO2	<b>Does the program have oversight practices that provide sufficient knowledge of grantee activities?</b>	YES 10%
-------	---	---------

*Explanation:* The program in general has an understanding of how its funds are utilized by grantees. The program tracks progress through required reports, frequent site visits and audits. The program described a process whereby program managers track expenditures regularly as part of their responsibilities and conduct field visits to ensure that funding is being used for its intended purposes. Field audits also focus on whether funding was used for its intended purposes. OGAC reviews aggregate expenditure information quarterly.

*Evidence:* Grantees submit Interim Financial Status Reports within 90 days of the close of the calendar year. The program has field staff that monitor country-level agreements. In the case of HHS, these staff act as project officers for the local grants. USAID uses cognizant technical officers (CTO) and strategic objective team leaders. Evidence includes sample site visit reports, guidelines for audits and for technical officers and the reporting structure.

3.CO3	<b>Does the program collect grantee performance data on an annual basis and make it available to the public in a transparent and meaningful manner?</b>	YES 10%
-------	---	---------

Section 4	<b>Program Results/Accountability</b>	
Number	Questions	Answer Score

4.1	<b>Has the program demonstrated adequate progress in achieving its long-term performance goals?</b>	SMALL EXTENT 8%
-----	---	-----------------

*Explanation:* Within the confines of what is feasible in the international setting, the program will make available to the public country level data on services provided toward the achievement of the program's performance measures and country level data reflecting changes in the HIV/AIDS burden. It does not provide grantee specific performance data to the public. The 2004 long-term goals were exceeded during the reporting period ending March 2005. The end of FY 2005 goal for care was exceeded but the goal for treatment was missed by approximately 70,000 people. A variety of factors contributed to this result, including the fact that, due to quality issues with host government data, country teams could not submit USG

<b>Section 3 - Program Management</b>	<b>Score 90%</b>
---------------------------------------	------------------

upstream results in five of the 15 focus countries. The program is working to resolve these issues with host governments so that the full extent of U.S.G. support for treatment can be reported. The prevention goal will be evaluated in tri-annual snapshots starting in 2006. Until then, only annual targets of persons reached with prevention messages are available. It is important to note that the actual for 2005 is from mid-year 2005, whereas the target is for all of 2005. Based on progress as of mid-year 2005, the program is on track to exceeding its goals for the full year of 2005.

*Evidence:* The Emergency Plan has exceeded the year one target for total number of people receiving antiretroviral therapy by almost 18%. The target was 200,000 persons on treatment and the result of one full year of implementation was a total of 235,000. The target for people reached with care and support services was 1,200,000 and the result was 2,009,259. The FY 2005 target for treatment was 470,000 people on treatment and preliminary data indicates that 401,233 people are on treatment. The care goal was 2,600,000 people receiving care services and 2,940,677 were served.

4.2	<b>Does the program (including program partners) achieve its annual performance goals?</b>	<b>LARGE EXTENT</b>	17%
-----	--	-------------------------	-----

*Explanation:* Baselines were established in FY 2004 for each of the annual indicators of the Emergency Plan. Annual targets for FY 2005 were also set. Preliminary results data for the end of FY 2005 indicates that most countries are achieving or exceeding their care, treatment, and PMTCT targets.

*Evidence:* FY 2005 Annual Report data provided Internally to OMB and will be published in the Annual Report to Congress in January 2006.

4.3	<b>Does the program demonstrate improved efficiencies or cost effectiveness in achieving program goals each year?</b>	<b>SMALL EXTENT</b>	8%
-----	---	-------------------------	----

*Explanation:* The Emergency Plan's efficiency measure begins with an FY2004 baseline and has its first target in FY2006. As such, a small extent is given because not enough time has passed for comparison. The baseline and targets reflect a reasonable starting point of efficiency in the field and ambitious reduction in unit costs for meeting program targets. As is noted in the evidence, the program has controlled administrative expenses and the implementing agencies have achieved other savings in execution.

*Evidence:* The efficiency measure is dollars per target reached. The program's baseline in FY 2004 per person reached is \$232 for prevention, \$195 for care and \$1,634 for treatment, reflecting a reasonable baseline of costs per unit and evidence to support the small extent rating. The program anticipates reductions beginning in FY 2006 through FY 2008. The implementing agencies have largely maintained their headquarter costs at FY 2004 levels despite the dramatic increase of program dollars under the Emergency Plan. An agency example of cost savings not specific to the program include CDC consolidation of all 13 IT infrastructure services, with reduced operating costs of 21% and redeployment of 18%

of staff to mission direct duties into the Information Technology Services Office in December 2003. As the program matures and data on efficiency gains for this measure and at the Federal execution level are collected, the response to this question is anticipated to change.

- |     |   |                 |     |
|-----|---|-----------------|-----|
| 4.4 | <b>Does the performance of this program compare favorably to other programs, including government, private, etc., with similar purpose and goals?</b> | LARGE<br>EXTENT | 17% |
|-----|---|-----------------|-----|

*Explanation:* A large extent is given because studies are not available comparing the effectiveness or efficiency of this program with similar efforts, such as the Global Fund or HIV/AIDS bilateral efforts of partner countries, but there is evidence that the program performs favorably in moving quickly and meeting the first year of targets. The program is the largest international health initiative initiated by one nation to address a single disease and has shown early progress in meeting objectives. The program moved very quickly to set up requisite mechanisms and policies with an emphasis on accountability and results from efforts in the field and disbursed initial appropriations to the field and other partners in a short-period of time.

*Evidence:* In FY 2004, the program committed \$865 million for national scale-up of prevention, treatment and care programs in the 15 focus countries, six months after receipt of the appropriation. The program has exceeded its first year goals for number of individuals receiving antiretroviral treatment. In the first year, the program also supported 3,800 programs for prevention, 300 sites for treatment, and more than 8,000 sites for care.

- |     |   |    |    |
|-----|---|----|----|
| 4.5 | <b>Do independent evaluations of sufficient scope and quality indicate that the program is effective and achieving results?</b> | NO | 0% |
|-----|---|----|----|

*Explanation:* This question's score has been re-weighted to zero due to the newness of the Emergency Plan. With under two full years of implementation, several evaluations are currently in process or planned but not yet completed. Several of the independent evaluations conducted on the Emergency Plan's focus-country initiative were completed early in the program's implementation and did not (or did not seek to) provide information on the program's impact or effectiveness. These reports did provide important information regarding the obstacles facing the Coordinator's Office in implementing the program, and subsequently have helped OGAC to strengthen their strategic and program planning efforts. The results of a USAID Inspector General Audit released in March 2005 were judged to be not of sufficient scope, as the audit looked only at USAID/Emergency Plan activities in Ethiopia. The only other completed evaluation of the program was released by the GAO in January 2005 and concluded that the Emergency Plan provided a smaller selection of recommended first-line ARVs than other major HIV/AIDS treatment initiatives in developing countries. The program expressed concern over the GAO's lack of attention to issues of quality assurance in relation to the availability of ARVs. The program acknowledges that safety and efficacy - and not just cost-effectiveness of prices - impact the range of products available for purchase under the Emergency Plan.

*Evidence:* "1) GAO-05-133: GAO Audit, Titled: Global HIV/AIDS Epidemic: Selection of Antiretroviral Medications Provided under U.S. Emergency Plan is Limited, January 2005. 2) GAO-04-784: U.S. AIDS Coordinator Addressing Some Key Challenge to Expanding Treatment, but Others Remain.2004. 3) Institute of Medicine. Scaling Up Treatment for the Global AIDS Pandemic: Challenges and Opportunities. July 2004. 4) USAID Office of the Inspector General. Audit of USAID/Ethiopia's Implementation of The President's Emergency Plan for AIDS Relief, March 30, 2005.

<b>Section 4 - Program Results/Accountability</b>	<b>Score</b>	<b>50%</b>
---	--------------	------------

- [View this program's assessment summary.](#)
- [Visit ExpectMore.gov](#) to learn more about program assessment and Improvement by the Federal Government.
- [Learn more](#) about detailed assessments.

Last updated: 01292008.2005FALL

## **Exhibit F**



# **ADS Chapter 303**

## **Grants and Cooperative Agreements to Non-Governmental Organizations**

Revision Date: 01/30/2007  
Responsible Office: M/OAA/P  
File Name: 303\_013007\_cd47

b. To be eligible for assistance under the Private Voluntary Organization grant program and other programs listed in **22 CFR 203.1**, both U.S. Private Voluntary Organizations and International Private Voluntary Organizations must be registered with USAID, as required by **22 CFR 203**. The registration requirement does not apply to local Private Voluntary Organizations.

c. **Qualifications.** The SO Team develops the minimum qualifications for applicant consideration. However, if the Agreement Officer determines that the criteria are so restrictive that they severely limit competition, the Agreement Officer may request the Activity Manager to broaden the criteria, or require the Activity Manager to process an exception to competition, as provided in **303.3.6.6**, in order to make the planned award.

d. **Multi-tiered Competition.** The SO Team, with the approval of the Agreement Officer, may establish a two or more tiered competition system. The SO Team may ask potential applicants to submit an executive summary or concept paper and corresponding budget information. After it reviews and evaluates these submissions, it conducts a second level of competition, using more specific evaluation criteria, among a selection of the best applicants to the first competition and requesting more detailed applications. The SO team may conduct additional levels of competition only if the second level does not adequately identify activities to be funded. Section V of the RFA for this type of competition must explain the intended process so that potential applicants know what to expect at each phase.

**303.3.6.3 Evaluation Criteria**  
Effective Date: 06/01/2006

The SO team is responsible for developing evaluation criteria used to evaluate applications. At a minimum, the criteria must include the following:

- Technical merits of the applications,
- Cost effectiveness and cost realism of the application,
- Past performance of the applicant, and
- Branding strategy and marketing plan.

The evaluation criteria in an announcement must give as much information as practical to allow potential applicants to judge whether it is in their best interest to incur costs to apply for an award. The criteria must address the importance of the technical and/or administrative elements, but must not be unduly restrictive. It is not necessary to quantify the relative weight of the criteria, but the announcement must identify the relative importance of the criteria. The Activity Manager must get the Agreement Officer's approval of the criteria before USAID publishes it in the RFA or APS.



**a. Past performance.** An applicant's past performance can serve as an indicator of the quality of its future performance. An applicant must provide a list of all contracts, grants, or cooperative agreements involving similar or related programs during the three years before the application. Reference information must include the location, award numbers if available; a brief description of work performed; and points of contact with current telephone numbers. The Activity Manager determines whether to require this information as part of the initial application, or to require it later from a limited number of applicants who have the best chance of being selected for an award. Requiring the information at a later date may be appropriate where USAID is conducting a "prequalification" competition (**see 303.3.6.2.d**). In any event, the Activity Manager must obtain past performance information before selection, and make that information part of the written evaluation that the Activity Manager forwards to the Agreement Officer. **See information on the use of Past Performance at: <http://www.acqnet.gov/Library/OFPP/BestPractices/pastperformguide.htm>**

**(1) Evaluating Past Performance.** The Activity Manager and Technical Evaluation Committee defined in 303.3.6.4 are responsible for evaluating an applicant's past performance. The Activity Manager and Technical Evaluation Committee will validate an applicant's past performance reference information by relying on existing evaluations to the maximum extent possible; and making a reasonable, good faith effort to contact all references to obtain verification or corroboration on the following evaluation criteria:

- How well an applicant performed,
- The relevancy of that the program work,
- Instances of good performance,
- Instances of poor performance,
- Significant achievements,
- Significant problems, and
- Any indications of excellent or exceptional performance in the most critical areas.

The Activity Manager and Technical Evaluation Committee may contact references other than those provided in the application if the RFA or APS states that other references may be contacted.

(2) Assessing how recent and relevant the past performance information is;

(3) Evaluating the past performance of the team, consortia, or joint venture members and proposed subaward organizations, along with the applicant's past performance; and

(3) Including an analysis and rationale for the conclusions reached regarding an applicant's past performance.

(4) The Technical Evaluation Committee may use the Contractor Performance System (CPS) and the Past Performance Information Retrieval System (PPIRS) if there is information available on the recipient in these systems, taking into account the differences between performance under acquisition and performance under assistance.

**b. No Requirement for Prior USAID Experience.** RFA and APS documents for award of USAID assistance instruments must not contain minimum qualification or evaluation criteria/selective factors requiring "prior USAID experience."

**c. Gender issues.** USAID must address gender issues in all USAID-funded activities (see ADS 201.3.12.6). USAID must include a statement outlining gender issues or a rationale for not including such a statement in the competitive RFA or APS, in accordance with ADS 201.3.12.6. The Approving Official (see ADS 201.3.12.16) determines the appropriateness of the statement or the rationale as part of the pre-obligation requirements. If the SO team decides that it should not incorporate gender issues, it must document the decision. When USAID directs applicants to incorporate gender issues into the activity, the RFA or APS must state the requirement.

When developing specific criteria for evaluating an applicant's plan to incorporate gender issues, the SO team must consult, to the extent necessary, with the Bureau for Economic Growth, Agriculture and Trade, Office of Women in Development (EGAT/WID). EGAT/WID will provide the SO team with guidance on structuring the criteria to evaluate the plan's positive impacts on the socio-economic status of women, varying impacts on men and women, and methods for measuring these impacts.

**d. Volunteers for Prosperity.** Executive Order 13317, signed by the President on September 25, 2003 (Executive Order 13317), requires that an applicant's use of highly skilled United States volunteers be an evaluation factor in the selection of applications for assistance activities to be implemented abroad under these initiatives:

- Emergency Plan for AIDS Relief,
- Digital Freedom Initiative,
- Water for the Poor Initiative,

- Trade for African Development and Enterprise Initiative,
- Middle East Partnership Initiative, and
- Other Presidential Initiatives that will be identified in the future.

**e. Environmental Concerns.** The Activity Manager must ensure that the requirements for environmental impact assessment in 22 CFR 216 have been met, approved in writing by the relevant Bureau Environmental Officer and are incorporated in the RFA, APS and award, as needed. When USAID directs applicants to address environmental concerns in the activity, the RFA or APS must state the requirement. ADS 204 contains detailed guidance on environmental concerns and ADS 201, ADS 202, and ADS 203 contain additional guidance on incorporating ADS 204 into planning, achieving and learning processes.

**f. Branding and Marking.** It is a federal statutory and regulatory requirement that all USAID programs, projects, activities, public communications, and commodities that USAID partially or fully funds under a USAID grant or cooperative agreement or other assistance award or subaward, must be marked appropriately overseas with the USAID Identity. See Section 641, Foreign Assistance Act of 1961, as amended; 22 CFR 226.91. Under the regulation, USAID requires the submission of a Branding Strategy and a Marking Plan, but only by the "apparent successful applicant," as defined in the regulation. The apparent successful applicant's proposed Marking Plan may include a request for approval of one or more exceptions to marking requirements established in 22 CFR 226.91. The AO is responsible for evaluating and approving the Branding Strategy and a Marking Plan (including any request for exceptions) of the apparently successful applicant, consistent with the provisions "Branding Strategy," "Marking Plan," and "Marking of USAID-funded Assistance Awards" contained in AAPD 05-11 and in 22 CFR 226.91. See also ADS 320. Please note that in contrast to "exceptions" to marking requirements, waivers based on circumstances in the host country must be approved by Mission Directors or other USAID Principal Officers, see 22 CFR 226.91(j). Please contact OAA/Policy, GC/A&A, or USAID's Senior Advisor on Brand Management if you have any questions about the applicability of either AAPD 05-11 or 22 CFR 226.91.

#### **303.3.6.4 Reviewing and Evaluating Applications**

**a.** At least two people (three or more is preferable) will be appointed to a Technical Evaluation Committee to evaluate applications. The Technical Evaluation Committee must evaluate the applications using the stated evaluation criteria. The Technical Evaluation Committee must keep selection information and applicant proprietary data confidential.

**b.** Committee members must possess the requisite technical knowledge or expertise to evaluate the technical merit of the applications. USAID may make exceptions with the approval of the Agreement Officer.