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FROM THE AMERICAN PEOPLE

Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: April 12, 2010

AAPD 10-03

AIDAR, APPENDIX D: IMPLEMENTING BENEFITS FOR SAME-SEX DOMESTIC PARTNERS OF USPSCs

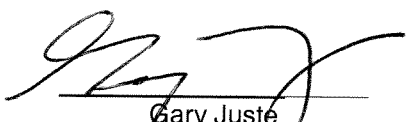
Subject Category: PERSONAL SERVICES CONTRACTS
Type: Policy

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/ Amends

<p>Applicable to:</p> <p>Existing awards; Modification required</p> <p><input type="checkbox"/> No later than</p> <p><input checked="" type="checkbox"/> As noted in guidance below</p> <p><input type="checkbox"/> RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC</p> <p><input type="checkbox"/> Other or N/A</p>	<p>Precedes change to:</p> <p><input checked="" type="checkbox"/> AIDAR Appendices D and J</p> <p><input type="checkbox"/> USAID Automated Directives System (ADS) Chapter</p> <p><input type="checkbox"/> Code of Federal Regulations</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> No change to regulations</p>
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Gary Juste
Acting Director

PURPOSE: The purpose of this AAPD is to implement benefits for same-sex domestic partners of U.S. Citizen/U.S. Resident Alien personal service contractors (USPSCs).

ACTION REQUIRED: Effective immediately, Contracting Officers (COs) must implement the changes to AIDAR Appendices D and J, as shown in Attachment 1 and as prescribed in the Guidance section below.

BACKGROUND: In June 2009, the Secretary of State announced that the Department of State would extend the full range of legally available benefits and allowances to same-sex domestic partners of Foreign Service employees serving overseas.

USAID announced in Executive Message dated August 4, 2009, that the Agency is extending those benefits and allowances to USAID Foreign Service employees and to USPSCs serving overseas. This AAPD provides more detailed implementing guidance for the USPSCs.

GUIDANCE: The following information discusses these changes, how they are being implemented, and how to obtain benefits.

1. What specific changes are being made and how are they being implemented?

The Executive Message noted above included information on changes the Department of State is making to the Foreign Affairs Manual (FAM) and the Standardized Regulations (DSSR). As stated in the Executive Message, the Department of State made interim changes to the FAM effective June 26, 2009, and to the DSSR, with an effective date of July 5, 2009. Subsequent to the issuance of the Executive Message, the Department of State formally revised the FAM to add a new 3 FAM 1600—Domestic Partners, and revised relevant sections of the DSSR, as anticipated in the Executive Message.

- The changes to the FAM and DSSR permit same-sex domestic partners of Foreign Service employees to qualify as family members for a variety of benefits and allowances. In order to implement these new policies for USPSCs serving overseas as stated in the Executive Message, the Director of M/OAA approved a class deviation to revise AIDAR Appendices D and J. These revisions:
 - 1) Change the definition of "Dependents" to include same-sex domestic partners;
 - 2) For USPSCs serving overseas, and as detailed in the USPSC's contract, add where applicable and subject to the availability of funds, the same benefits for same-sex domestic partners as provided for direct hire Foreign Service Officers;
 - 3) For USPSCs serving overseas, implementing the policy detailed in the referenced Executive Message.

The changed text is in **bold italic font** in Attachment 1. COs must remove the bold italic font before including the General Provisions (GPs) in contracts. Note, too, that only those subsections of Appendix D, Section 4, "POLICY" and those GPs affected by the Class deviation are included in Attachment 1.

- For the Agency's offshore USPSCs, applying the same-sex domestic partner policy to USPSCs does not equate USPSCs benefits and allowances with United States Direct Hires (USDH). What it does do is establish the policy to extend the benefits and allowances previously provided only to a "spouse" to those USPSCs with a same-sex domestic partner and who meet the eligibility criteria described below. The USPSCs' benefits and allowances continue to be limited by the Appendices, Contract Information Bulletins (CIBs), AAPDs, and other means used to add, limit, or extend benefits or allowances. The changes noted above apply as appropriate to existing CIBs and AAPDs.
- Where appropriate, this extension of benefits and allowances will apply to the children of same-sex domestic partners as well.

The FAM and DSSR may be accessed from the Office of Human Resources' Web page at <http://inside.usaid.gov/HR/benefits/index.cfm>. COs should encourage USPSCs to review these changes to acquire a more complete explanation, but they must understand that the terms and conditions of their contracts determine which benefits and allowances they are eligible to receive. COs must also ensure that sufficient funds are available to cover the costs associated with increased benefits and allowances associated with the new policy.

2. What is the process for obtaining benefits?

Consistent with the FAM regulations, and the implementing direction provided in the Executive Message noted above for USDH, USPSCs who seek benefits for their same-sex domestic partners should work with their Contracting Officer.

They must provide the Contracting Officer a signed copy of the affidavit (Attachment 2) and file a new or amended OF-126, Residency and Dependency Report, to add "domestic partner" in the box requesting "relationship." The OF-126 may be accessed from the Agency's Forms Web page. USPSCs may file these forms immediately.

In addition, USPSCs overseas must submit Form SF-1190, Foreign Allowances Application, Grant and Report, in order to include newly declared family members for overseas allowances purposes.

Domestic partners must also comply with the same security requirements and undergo the same background check as spouses. Domestic partners must also have a valid medical clearance for the post of assignment. Those already at post should follow the procedures for a newly acquired dependent. They will be given access to the overseas health unit for up to 90 days pending completion of their medical clearance. It is important to note that domestic partners must have health insurance as the Agency acts only as a secondary payer in the event of overseas hospitalization.

3. What are the next steps/Where can I find additional information?

USPSCs may use the Office of Human Resources Web Page with various references and documents. This information is located at <http://inside.usaid.gov/HR/benefits/index.cfm>. Again, however, while USPSCs are encouraged to review these changes to acquire a more complete explanation, USPSCs must understand that the terms and conditions of their

contracts determine which benefits and allowances they are eligible to receive.

For USPSCs, M/OAA will continue to update and publish additional information, additional instructions and guidance as needed and necessary.

POINT OF CONTACT: Questions may be directed to M/OAA/P, Tom M. Henson, on (202) 712-5448.

Attachments: (1) Revised sections of AIDAR Appendix D and Appendix J
(2) Affidavit

ATTACHMENT 1

(* * * Indicates omitted subsections that remain unaffected by this Class Deviation. If Class Deviation OAA-DEV-09-2c, implemented in AAPD 10-01, revised any of the same subsections affected by this Class Deviation, then the consolidated changes appear below, but only the changes resulting from this Class Deviation are in *bold italic font*.)

**Appendix D to Chapter 7—Direct USAID Contracts With a U.S. Citizen or
a
U.S. Resident Alien for Personal Services Abroad**

4. Policy.

* * *

(c) Withholdings and Fringe Benefits.

(1) * * *

(2) * * *

(i) * * *

(ii) * * *

(A) The contribution for health insurance shall not exceed 72% of the actual cost to the PSC for his/her annual health insurance, or the maximum U.S. Government contribution for a direct-hire employee, as announced annually by USAID's Office of Acquisition and Assistance, whichever is less. If the PSC is covered under a spouse's **or same-sex domestic partner's** health insurance plan, where the spouse's **or same-sex domestic partner's** employer pays some or all of the health insurance costs, the cost to the PSC for annual health insurance shall be considered to be zero.

(B) The contribution for life insurance shall be up to 50% of the actual annual costs to the PSC for life insurance, not to exceed \$500.00 per year.

* * *

(3) A PSC who is a spouse **or same-sex domestic partner** of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's **or same-sex domestic partner's** Government health or life insurance policy is ineligible for the contribution under paragraph 4(c)(2)(ii) of this appendix.

* * *

12. General Provisions

Contract With a U.S. Citizen or a U.S. Resident Alien for Personal
Services Abroad

* * *

GP 1. Definitions (April 2010)

* * *

(n) *Dependents* means:

(1) Spouse or **same-sex domestic partner**.

(2) Children (including step and adopted children and children of **same-sex domestic partners**) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) Parents (including step and legally adoptive parents) of the employee or of the spouse or **same-sex domestic partner**, when such parents are at least 51 percent dependent on the contractor for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the contractor, or of the spouse or **same-sex domestic partner**, when such sisters and brothers are at least 51 percent dependent on the contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

* * *

(p) U.S. Resident Hire Personal Services Contractor (PSC) means a U.S. citizen who, at the time of hiring as a PSC, resides in the Cooperating Country:

(1) As a **dependent** of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or

(2) For reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes a person who at the time of contracting, is a lawfully admitted permanent resident of the United States.

* * *

GP 9. INSURANCE (April 2010)

* * *

(5) A contractor who is a **dependent** of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their Government employee's or retiree's Government health or life insurance policy is ineligible for the contribution under paragraphs (b)(1) or (b)(2) of this provision.

* * *

GP 10. Travel and Transportation Expenses (April 2010)

* * *

(i) Emergency and Irregular Travel and Transportation. Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for USAID-direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the Cooperating Country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for contractor employees and dependents and returning to the post of duty, subject to the prior written approval of the Mission Director that such travel is necessary for one of the following reasons.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at assigned post of duty. The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death, or serious illness or injury of a member of the immediate family of the employee or the immediate family of the employee's spouse or **same-sex domestic partner**.

* * *

APPENDIX J SECTION 4 POLICY

4. Policy

* * *

(c) Conditions of Employment

* * *

(2) Compensation.

(i) It is USAID's general policy (see AIDAR 722.170) that PSC compensation may not, without the approval of the Mission Director or Assistant Administrator, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country. Compensation for TCN or CCN personal services contractors set in accordance with the provisions of 4c(2)(ii) below satisfies this requirement.

(ii) In accordance with Section 408(a)(1) of the Foreign Service Act of 1980, a local compensation plan forms the basis for all compensation payments to FSNs which includes CCNs and TCNs. The plan is each post's official system of position classification and pay, consisting of the local salary schedule which includes salary rates, statements authorizing fringe benefit payments, and other pertinent facets of compensation for TCNs and CCNs, and the local position classification system as reflected in the Local Employee Position Classification Handbook (LEPCH) or equivalent in effect at the Mission. Compensation for PSCs will be in accordance with the local compensation plan, to the extent that it covers employees of the type or category being employed, unless the Mission Director determines otherwise. If the Mission Director determines that compensation in accordance with the local plan would be inappropriate in a particular instance, then compensation will be set in accordance with (in order of preference):

(A) Any other Mission policies on foreign national employee compensation; or

(B) Paragraphs 4(c) (d), (e), (g), (h), and (i) of Appendix D.

When compensation is set in accordance with this exception, the record shall be documented in writing with a justification prepared by the requesting office and approved by the Mission Director.

(iii) The earning of leave (annual and sick), allowances and differential (if applicable), salaries and all other related benefits cannot be enumerated in this Appendix as they vary from Mission to Mission and are based upon the compensation plan for each.

(iv) Unless otherwise authorized, the currency in which compensation is paid to contractors shall be in accordance with the prevailing local compensation practice of the post.

(v) CCN and TCN contractors are eligible for allowances and differential on the same basis as direct-hire FSN employees under the post compensation plan.

(vi) A USAID PSC who is a spouse, dependent, or **same-sex domestic partner** of a current or retired U.S. Civil Service, U.S. Foreign Service, or U.S. military service member, and who is covered by the employee's or retiree's government health or life insurance policy, is ineligible for a contribution towards the costs of annual health and life insurance.

(vii) Retired CCNs and TCNs may be awarded personal services contracts without any reduction in or offset against their Government annuity.

* * *

ATTACHMENT 2

AFFIDAVIT PURSUANT TO
DECLARING DOMESTIC PARTNER RELATIONSHIP

For the purposes of obtaining benefits and assuming obligations similar to those provided for Direct Hire USAID employees, under the Foreign Affairs Manual (FAM) and Department of State Standardized Regulations (DSSR), I, _____ [name of contractor] _____, declare that I and [full name of domestic partner] _____ --

- (1) are each other's sole domestic partner and intend to remain committed to one another indefinitely;
- (2)
 - (a) have a common residence, and intend to continue the arrangement; or
 - (b) have had a common residence and intend to resume having a common residence after an assignment abroad for which my domestic partner did not accompany me; or
 - (c) would have a common residence, but are prevented from having one for the following reasons;¹

- (3) are at least 18 years of age and mentally competent to consent to contract;
- (4) share responsibility for a significant measure of each other's common welfare and financial obligations;
- (5) are not married to, joined in civil union with, or domestic partners with anyone else; and
- (6) are same-sex domestic partners, and not related in a way that would prohibit legal marriage in the State in which we reside.

I further declare that I –

¹ If the contractor cannot certify to the “common residence clause” except by filling in clause 2(c), the domestic partner relationship does not qualify for benefits and obligations similar to those under the FAM and DSSR unless and until, after review of the contractor’s description, the Assistant Administrator for Management (AA/M) or his or her designate determines that the circumstances described are sufficient to justify the waiver of the common residency requirement.


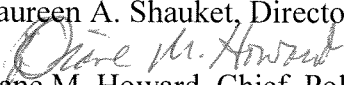
- (7) agree to file a statement of dissolution of the domestic partnership not later than 30 days after the death of my domestic partner or the date of dissolution of the domestic partnership;
- (8) understand that my domestic partner will be held to similar standards of conduct in the FAM that apply to family members; and
- (9) understand that falsification of information within this affidavit may constitute a criminal violation under 18 U.S.C. 1001 and may lead to disciplinary action.

Contractor's Signature: _____

Date: _____

Printed Name of Contractor: _____

ACTION MEMORANDUM FOR THE DIRECTOR, M/OAA

TO: Maureen A. Shauket, Director, M/OAA 
FROM:  Diane M. Howard, Chief, Policy Division, M/OAA/P
SUBJECT: Approval of a Class Deviation and Acquisition and Assistance Policy Directive (AAPD) to Implement Benefits for Same-Sex Domestic Partners for USPSCs Serving Overseas
Deviation Control No. _____
REFERENCE: Executive Message, August 4, 2009; STATE 063819 (Tab 1)

PURPOSE:

As Head of the Contracting Activity for USAID/Washington, your approval is required for a class deviation in accordance with 701.4 of the AIDAR in order to authorize implementation of the benefits for same-sex domestic partners of USPSCs serving overseas as detailed in the STATE cable and Executive Message (Tab 1). If approved, the class deviation will be issued as an AAPD (Tab 2).

SPECIFIC TEXT AFFECTED BY CLASS DEVIATION:

If approved, the class deviation will authorize: 1) changing the definition of “Dependents” to include same-sex domestic partners; 2) for USPSCs serving overseas, adding the same benefits for same-sex domestic partners as provided for direct hire Foreign Service Officers; and 3) for USPSCs serving overseas, implementing the policy detailed in the referenced Executive Message.

In order to add these benefits for same-sex domestic partners of USPSCs, we propose revising AIDAR, Appendices D and J, as detailed at Tab 2. Essentially, this revision redefines a “Dependent” to include same-sex domestic partners, changes the language within the General Provisions of the contract to include same-sex domestic partners, and changes the “Policy” section of Appendix D to reflect the inclusion of same-sex domestic partners on the same basis as “Spouse.” The change to Appendix J Section 4(c)(2)(vi) simply clarifies that to the extent a same-sex domestic partner of a current or retired direct-hire Federal employee is covered by the health or life insurance policy of the employee/retiree, then the domestic partner is not eligible for a USG contribution towards the costs of annual health and life insurance if the domestic partner enters into a PSC under Appendix J. Currently, federal health and life insurance coverage is not available to same-sex domestic partners of current direct-hire Federal employees or retirees, but should the law change to allow coverage, then the language in Appendix J places the same limitation on the USG contribution that currently applies to spouses.

DISCUSSION:

In response to a Presidential memorandum, the Secretary of State announced in a June 19, 2009 cable (STATE 063819) that the Department of State would extend the full range of legally available benefits and allowances to same-sex domestic partners of Foreign Service employees serving overseas.

In the referenced Executive Message, USAID announced it would extend those benefits and allowances to USAID Foreign Service employees and to USPSCs serving overseas. The State Department codified the changes for the Foreign Service by revising the Foreign Affairs Manual (FAM) and the Foreign Affairs Handbook (FAH), but neither of these regulations applies to USPSCs, so USAID must revise the appropriate regulation, which is AIDAR Appendices D and J. Pending a formal revision to the Appendices through notice and comment in the Federal Register, USAID must process a class deviation as an interim step to the rule-making process. The AAPD at Tab 2 is the method for implementing the regulatory changes this class deviation authorizes and for providing the detailed guidance for COs awarding and administering USPSCs, as the Executive Message indicated M/OAA would do.

JUSTIFICATION:

This class deviation is in the best interests of the Agency and the USG because it implements comparable benefits for USPSCs as were granted to direct-hire Foreign Service employees posted overseas. In issuing the Executive Message in Tab 1, the Acting Administrator has already approved applying these benefits to USPSCs serving overseas, and this class deviation authorizes the changes to the applicable regulations, AIDAR Appendices D and J, that will allow the Agency to implement the A-A/AID's decision. The AAPD in Tab 2 is necessary in order to notify COs of the new policy and to provide the additional implementation guidance COs will need to carry it out.

The OAA Policy Division prepared this class deviation and therefore has no additional comments to make. We are not aware of any other deviations for these purposes.

AUTHORITY:

AIDAR 701.470(b) (1) states that only the Director of M/OAA has the authority to approve class deviations that affect more than one contracting activity, which is the case for this class deviation.

EFFECTIVE DATE OF THE DEVIATION:

The class deviation and AAPD will be effective on the date of signature, below. The class deviation will expire in two years from date of signature, unless rescinded, extended, or formally incorporated into the AIDAR.

RECOMMENDATIONS:

1. That you approve this class deviation to AIDAR Appendix D to:

- Change the definition of “Dependents” to include same-sex domestic partners;
- For USPSCs serving overseas, add the same benefits for same-sex domestic partners as provided for direct hire Foreign Service Officers; and
- For USPSCs serving overseas, implement the policy detailed in the referenced Executive Message;

Approved: Maureen A. Shauket
 Maureen A. Shauket
 Director, M/OAA

4/9/2010
 Date

Disapproved: _____
 Maureen A. Shauket, Director, M/OAA

 Date

2. That you approve the attached AAPD to implement the changes above by signing in the designated places in Attachment 2 (Tab 2). We must issue the General Policy Notice in Tab 3 to officially notify the Agency that the AAPD is in effect and to formally incorporate the AAPD into the Automated Directives System (ADS) (the AIDAR and AAPDs that update the AIDAR are Mandatory References to ADS 302).

ATTACHMENTS:

1. TAB 1, Executive Message, August 4, 2009; STATE 063819
2. TAB 2, AAPD 09-xx, Personal Services Contracts – AIDAR, APPENDIX D: IMPLEMENTING BENEFITS FOR SAME-SEX DOMESTIC PARTNERS OF USPSCs
3. TAB 3, General Notice announcing implementation of benefits for same –sex domestic partners of USPSCs

Clearance for Action Memorandum requesting Director's approval for class deviation regarding implementation of benefits for same-sex domestic partners of USPSCs

M/OAA/P: DHoward DH Date 3/24/10
GC/A&A: JJin JJ Date: 3/25/10
HR/PPIM: JJones by email Dates: 4/6/10
HR/PPIM: MHoirup-Bacolod MHB Date: 4/7/10
M/OAA/OD GJuste GJ Date: 3/30/10
M/OAA/OD: MEugenia ME Date 3/25/10
M/OAA/OD: BEnroth BE Date 3/30/10

Drafted by:M/OAA/P:THenson-DHoward:P:/p.op.p/pub/PSCs/SAME-SEX Class Deviation—
REVISION 4.