



*Office of Inspector General*

**REFERRAL MEMORANDUM**

**TO:** Shannon Green, Executive Director, USAID Anti-Corruption Task Force

**FROM:** Marc Meyer, Deputy Assistant IG for Investigations, OIG /S/  
Adam Kaplan, Deputy General Counsel, Investigations, OIG /S/

**SUBJECT:** Vulnerabilities in USAID’s Ability to Assess Award Applicants’ Relationships with Corrupt Actors

**DATE:** January 13, 2022

On June 3, 2021, President Biden issued a National Security Study Memorandum (NSSM) that established the fight against corruption as a core national security interest of the United States. The NSSM called for an interagency review process to “establish best practices and enforcement mechanisms such that foreign assistance and security cooperation activities have built-in corruption prevention measures.”<sup>1</sup> USAID’s Anti-Corruption Task Force, established following the issuance of the NSSM, has committed to identifying corruption risks within USAID’s programs, policies, and practices, and ways to mitigate those risks. Such efforts may occur through updating and/or creating new anti-corruption safeguards, risk-assessment frameworks, and risk-mitigation policies and procedures.<sup>2</sup>

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<sup>1</sup> Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>.

<sup>2</sup> Specifically, USAID Anti-Corruption Task Force Pillar Four states, “The ACTF will work closely with USAID’s Office of Inspector General (OIG)...to identify corruption risks within USAID’s programs, policies, and practices and ways to mitigate those risks, potentially through updating and/or creating new anti-corruption safeguards, risk-assessment frameworks, and risk-mitigation policies and procedures.”

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As Deputy Administrator Coleman recently stated, USAID has “long witnessed the ways in which corruption fundamentally undermines democracy and development progress across all sectors.” Through recent casework, OIG has identified a vulnerability in the agency’s ability to safeguard its programming from influence by corrupt actors. Namely, USAID’s pre-award certifications do not capture information detailing whether prospective award recipients have engaged with actors sanctioned by the United States for corrupt activity.

Currently, USAID requires applicants for assistance awards to make the following certification:

(1) The undersigned represents, to the best of its knowledge, that...[T]he applicant did not, within the previous three years, knowingly engage in transactions with, or provide material support or resources to, any individual or entity who was, at the time, subject to sanctions administered by the Office of Foreign Assets Control (OFAC) within the U.S. Department of Treasury pursuant to the Global Terrorism Sanctions Regulations ... Note: USAID intends to retain the information disclosed to the Agreement Officer pursuant to this paragraph in any award file and use it in determining whether to provide the applicant with an assistance award ... This certification includes express terms and conditions of the award, and any violation of it will be grounds for unilateral termination of the agreement by USAID. This certification does not preclude any other remedy available to USAID.<sup>3</sup>

This pre-award certification enhances the agency’s ability to make informed decisions regarding awards to prospective grantees. It also provides an enforcement mechanism in the form of criminal, civil, and administrative remedies for those awardees that conceal their ties to terrorist organizations.<sup>4</sup> However, the agency lacks a similar pre-award certification that requires a prospective awardee to disclose prior relationships with actors deemed by the U.S. to have engaged in corruption in the very countries where USAID programming exists.<sup>5</sup> Executive Order (E.O.) 13818, builds upon and implements the Global Magnitsky Human Rights Accountability Act<sup>6</sup> and targets perpetrators of corruption and serious human rights abuse. The Department of Treasury’s Office of Foreign Asset Controls (OFAC) issues sanctions pursuant to E.O. 13818 which, “impose tangible and significant consequences on those who commit serious

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<sup>3</sup> OIG, in a June 29, 2018 memorandum to then-Assistant Administrator for USAID’s Bureau of Management, noted that this pre-award certification was, and still is, required only for prospective grantees, not contractors.

<sup>4</sup> Examples of efforts to conceal such prior relationships are evident in False Claims Act cases involving two USAID implementers, the [American University of Beirut \(AUB\)](#) and [Norwegian People’s Aid \(NPA\)](#), both of which reached settlements under the False Claims Act with the U.S. Department of Justice for \$700,000 and \$2,025,000, respectively. AUB had falsely certified that it had not provided past material support to U.S.-designated terrorist entities, some of which were affiliated with Hezbollah. NPA concealed prior and continued support to Iran, Hamas, the Popular Front for the Liberation of Palestine, and the Democratic Front for the Liberation of Palestine. By falsely certifying that such support had not occurred, AUB & NPA denied USAID the opportunity to assess whether the award should still be granted. OIG and DOJ have other ongoing investigations into similar false certifications.

<sup>5</sup> An implementer is required to disclose transactions with, or the provision of resources to, *any* OFAC sanctioned entity during the performance of the award. However, such disclosures at the pre-award stage are limited to relationships with entities designated for counterterrorism sanctions.

<sup>6</sup> 22 U.S.C. § 2656 (2012).

human rights abuse or engage in corruption, as well as to protect the financial system of the United States from abuse by these same persons.” Parties designated for sanctions include:

Foreign persons who are or have been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery, related to their tenure.

Under the Executive Order, Magnitsky Act anti-corruption sanctions may also be imposed on those who have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of parties that have engaged in the above [corrupt] activities.”

In December, surrounding the President’s Summit for Democracy, OFAC sanctioned several foreign entities for engaging in transnational corruptive activities, including those located in:

- **Kosovo:** Leaders of the Zvonko Veselinovic Organized Crime Group, which engaged in a largescale bribery scheme with Kosovar and Serbian security officials who facilitated the group’s illicit trafficking of goods, money, narcotics, and weapons between Kosovo and Serbia. OFAC stated that Veselinovic and his brother had agreements with politicians to help their party win elections and contribute money to their candidate, in return for access to prime infrastructure contracts and proprietary business information to support their business investments.<sup>7</sup>
- **El Salvador:** Martha Carolina Recinos De Bernal (Recinos), the head of a multiple-ministry, multi-million-dollar corruption scheme involving suspicious procurements in the construction of a hospital, in addition to directing various government ministers to authorize several suspicious pandemic-related purchases, including millions of dollars in surgical masks and millions more on hospital gowns from companies with no apparent ties to the healthcare or manufacturing industries. Recinos also directed a corruption scheme in which government-purchased food baskets intended for COVID-19 relief were diverted for the use of specific political candidates to garner support in the February 2021 municipal and legislative elections.<sup>8</sup>
- **Guatemala:** Manuel Victor Martinez Olivet (Martinez), accused of engaging in various acts of misappropriation, fraud, and abuse of authority during his tenure as the Director of the Santa Rosa Health Area within the Guatemalan Ministry of

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<sup>7</sup> Press Release, U.S. Dep’t of the Treasury, Treasury Targets Corruption Networks Linked to Transnational Organized Crime (Dec. 8, 2021), <https://home.treasury.gov/news/press-releases/jy0519>.

<sup>8</sup> Press Release, U.S. Dep’t. of Treasury, Treasury Issues Sanctions on International Anti-Corruption Day (2021) <https://home.treasury.gov/news/press-releases/jy0523>.

Public Health. Guatemalan authorities initially began their investigation into Martinez's activities following press reporting alleging that Martinez favored companies related to his family and directly awarded contracts to them without going through the public bidding process, circumventing the regular procurement process.<sup>9</sup>

- **Democratic Republic of Congo:** Congolese businessman Alain Mukonda and 12 associated companies, accused of providing support to sanctioned billionaire Dan Gertler in the Democratic Republic of the Congo (DRC) and Gibraltar. With assistance from corrupt government officials, Gertler amassed his fortune through hundreds of millions of dollars' worth of corrupt mining and oil deals in the DRC, causing a loss of more than \$1.3 billion in revenues. Mukonda supported Gertler by opening proxy bank accounts for him, making 16 cash deposits totaling between 11 and 13.5 million dollars into accounts of companies he incorporated that belonged to Gertler, and re-domiciling several of the latter's companies to the DRC.<sup>10</sup>

The OFAC activity above underscores the national security emphasis on combatting corruption and corrupt individuals. Within USAID programming, certifications regarding prospective awardees' ties to terrorist organizations have served as an effective deterrent for the former, as they are on notice that concealing or failing to exercise due diligence in identifying and disclosing prior relationships with terrorist organizations can result in potential criminal, civil, and administrative liability. With no similar certification requirement for prospective awardees concerning their past relationship with corrupt actors, USAID places its programs at risk of being compromised by parties that seek to divert foreign assistance dollars for illicit purposes or to further their personal interests. A certification mandating disclosure of a prospective awardee's relationship with sanctioned, or otherwise known, corrupt entities would afford USAID the opportunity to make an informed decision on the scope and circumstances of such prior relationships, including the extent to which such past activity may be disqualifying. The information could also help the agency identify whether additional risk controls and specific conditions should be incorporated into an award if the applicant is selected.

OIG takes no position in prescribing the exact wording of an additional pre-award certification or implementation thereof. However, investigating allegations of false statements made in response to any such certification would be within OIG's jurisdiction and, alongside our partners at the Department of Justice, assessed for potential enforcement remedies.

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<sup>9</sup> *Id.*

<sup>10</sup> Michael Volkov, *The United States Strategy on Countering Corruption: Digging into the Anti-Corruption Initiatives (Part III of III)*, JD SUPRA, Dec. 16, 2021, <https://www.jdsupra.com/legalnews/the-united-states-strategy-on-7147940/>; Press Release, U.S. Dep't of the Treasury, Treasury Targets Corruption Linked to Dan Gertler in the Democratic Republic of the Congo (Dec. 6, 2021), <https://home.treasury.gov/news/press-releases/jy0515>.

Please contact Deputy Assistant Inspector General for Investigations Marc Meyer and  
OIG Deputy General Counsel Adam Kaplan for additional questions and reports of any actions  
taken in response to this memorandum.

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