



OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID'S FAITH-BASED AND COMMUNITY INITIATIVES

AUDIT REPORT NO. 9-000-09-009-P
July 17, 2009

WASHINGTON, DC



Office of Inspector General

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MEMORANDUM

TO: Acting Director, Center for Faith-Based and Community Initiatives, Mauricio Vera
Director, Office of Acquisition and Assistance, Maureen Shauket
Director, Office of Food for Peace, Jeffrey M. Borns
Director, Office of American Schools and Hospitals Abroad, George E. Like

FROM: Director, Performance Audits Division, Steven H. Bernstein /s/

SUBJECT: Audit of USAID's Faith-Based and Community Initiatives
(Report Number 9-000-09-009-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments on the draft report and included the comments in their entirety in appendix II.

This report contains seven recommendations to assist USAID's Center for Faith-Based and Community Initiatives, along with the Office of Acquisition and Assistance, Food for Peace, and American Schools and Hospitals Abroad, in improving its policies and procedures for awards to faith-based and community organizations in accordance with the principles contained in Executive Order 13279. On the basis of information provided by management in response to the draft report, we determined that final action has been taken on recommendations 1 and 6. In addition, a management decision has been reached on recommendations 2, 3, 4, 5, and 7. A determination of final action will be made by the Audit Performance and Compliance Division upon completion of the planned corrective actions.

I appreciate the cooperation and courtesy extended to my staff during the audit.

CONTENTS

Summary of Results	1
Background	3
Audit Objectives.....	4
Audit Findings	5
Were USAID-awarded funds used for religious activities?.....	5
USAID Should Seek Guidance From the White House on Funding Religious Activities	7
Did USAID implement policies and procedures for awards to faith-based and community organizations in accordance with the principles contained in Executive Order 13279?.....	9
USAID Internal Directives Should Incorporate All the Requirements of 22 CFR § 205.1.....	11
USAID Regulations for Eligibility and Certification Need Minor Revision.....	13
Standard Award Clauses Should Incorporate All Requirements of 22 CFR § 205.1.....	14
Specified Awards Should Be Modified to Include a Standard Clause.....	16
Evaluation of Management Comments	18
Appendix I—Scope and Methodology	20
Appendix II—Management Comments	22
Appendix III—Executive Order 13279 Principles	29
Appendix IV—22 CFR § 205.1 Requirements	31
Appendix V—Account of Awards	34
Appendix VI—ADS 303.3.5.2c Eligibility Information	36

SUMMARY OF RESULTS

In January 2001, President George W. Bush began an initiative to improve opportunities for faith-based organizations to compete for Federal funding. His initiative sought to “level the playing field” for faith-based organizations to compete for Federal awards and to ensure that such funding complies with Federal laws—including laws that relate to separation of church and state. In 2002, the President established an office at USAID to assist with the initiative, and he issued Executive Order 13279 to guide Federal agencies in developing policies concerning faith-based organizations. Pursuant to this Executive order, USAID issued nine regulatory requirements pertaining to the Agency’s work with faith-based organizations (see page 3).

This audit surveyed 31 USAID regional legal advisors, as well as 9 of the 10 faith-based organizations that receive the most USAID funding, concerning the use of USAID funds for religious activities. From these responses, audit staff found that some USAID-awarded funds were used for religious activities in four contracts that amounted to more than \$325,000. These funds were used for the rehabilitation of mosques and adjoining community centers in Iraq. USAID also funded, within a program to combat HIV/AIDS, lesson plans that contained Biblical applications and discussions.

However, USAID officials were unsure whether such uses of Agency funding violated Agency regulations or the Establishment Clause of the First Amendment to the Constitution. In their view, the relevant legal precedent relating to the separation of church and state, and its application overseas—especially in light of foreign policy objectives—complicated the decision-making process about what activities should or should not be funded. USAID requested legal clarification on this issue from the Department of Justice in 2007 but has not received final guidance (see pages 5–7).

Despite this uncertainty, USAID generally implemented policies and procedures for awards to faith-based and community organizations in accordance with the Executive order and Agency regulations. USAID has policies and procedures in place to inform partners of the requirements and to assist in enforcement. For example, the Agency’s Center for Faith-Based and Community Initiatives conducts a variety of outreach activities. Also, the Office of Acquisition and Assistance created a policy that assistance awards must include a standard provision to notify partners of the requirements for faith-based organizations (see pages 9–11).

This audit report does not dispute the fact that questions concerning Establishment Clause issues are highly complex and need to be viewed on a case-by-case basis. Nor does this audit try to determine the legality of religiously infused programming sponsored by the Agency.

This report contains seven audit recommendations. The first recommends that USAID consult with the executive director of the White House Office of Faith-Based and Neighborhood Partnerships to resolve the legal question related to what program activities it may or may not fund (see page 8). The second and third recommend revisions to internal guidance to make it more thorough and to agree with the policy that faith-based organizations should have an equal footing in competing for Federal financial assistance. The fourth encourages changing the standard clause for awards to better

inform partners of USAID's regulatory requirements. The remaining three recommend corrections to awards that did not provide complete notification of the requirements for faith-based organizations (see pages 12, 14, 15, and 17).

USAID's Center for Faith-Based and Community Initiatives, along with the Office of Acquisition and Assistance, Food for Peace, and American Schools and Hospitals Abroad, agreed with recommendations 2, 3, 4, 5, and 7 and will implement corrective actions within a stated timeframe. On the basis of management actions, management decisions have been reached on recommendations 2, 3, 4, 5, and 7. Regarding recommendation 6, we consider that management actions have been sufficient to close the recommendation upon issuance of this report (see pages 18 and 19). Management's response to the first recommendation was extensive—USAID officials stated concerns over the conclusion drawn regarding complex Establishment Clause legal questions. However, on the basis of an evaluation of management's response to the draft report, the audit determined that final action has been taken on recommendation 1 (see page 18).

Management comments are presented in their entirety in appendix II (see pages 22–28).

BACKGROUND

Through a series of Executive orders beginning in January 2001, President George W. Bush created the White House Office of Faith-Based and Community Initiatives as well as Centers for Faith-Based and Community Initiatives in 12 Federal agencies, not only to “level the playing field” for faith-based organizations to compete for Federal awards but also to ensure that such funding complies with Federal laws. He created the Center for Faith-Based and Community Initiatives (the Center) at USAID in 2002 through Executive Order 13280. President Bush sought to identify and eliminate barriers to the full participation of faith-based and community organizations in the provision of federally funded social services. The Center reported that the amount USAID had awarded to faith-based groups rose from \$552 million in fiscal year (FY) 2006 to \$586 million in FY 2007. During these 2 fiscal years, USAID had 512 assistance agreements with 136 faith-based organizations.

President Bush created USAID’s Center to coordinate Agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in providing social services. The Center provides these organizations with information on the initiative and the Agency, as well as guidance and training in applying for and administering Federal funding. However, USAID’s Office of Acquisition and Assistance is responsible for formulating Agency policies for its assistance awards.

In December 2002, President Bush issued Executive Order 13279 to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other community organizations. The Executive order provides six principles for agencies to use in administering social service programs supported with Federal financial assistance (see appendix III, Executive Order 13279 Principles). These principles protect the interests of faith-based organizations, beneficiaries receiving social services, and Government agencies providing Federal funds, seeking a balance between the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution.

USAID published a Final Rule in the *Federal Register* (69 FR 61716, October 20, 2004) establishing nine requirements to govern the relationship between USAID and faith-based organizations (see appendix IV), including implementation of Executive Order 13279 principles.¹ The Final Rule revised USAID regulations pertaining to the award of grants, cooperative agreements, and contracts for the purpose of administering grant programs to ensure their compliance with executive branch policy and to clarify that faith-based organizations are eligible to participate in programs on the same basis as any other organization. The Final Rule provided clarity and specific guidance on partnerships with faith-based organizations and allowable activities.

¹ The Final Rule is the culmination of the Agency’s rulemaking process. Portions of the Final Rule were codified in 22 CFR § 205.1. The June 7, 2004, *Federal Register* gave notice of USAID’s proposed changes to, among other regulatory parts, 22 CFR part 205, and requested comments from interested persons. The October 20, 2004, *Federal Register* published comments received, USAID’s responses to those comments, implementation policy, and the final text of the changes to the Code of Federal Regulations.

The Bush administration's efforts to expand opportunities for faith-based organizations and to strengthen their capacity to provide social services have sparked interest among advocacy groups, faith-based organizations, and Congress. These efforts have raised concerns about whether (1) Federal funds are being used for religious purposes; (2) organizations are properly monitored to ensure that the administration of these funds does not violate the Establishment Clause of the First Amendment, which safeguards the separation of church and state;² and (3) Federal Government policy should allow faith-based organizations to hire on the basis of religion for federally funded positions.

In February 2009, President Obama signed Executive Order 13498. It replaced President Bush's White House Office of Faith-Based and Community Initiatives with the White House Office of Faith-Based and Neighborhood Partnerships. Executive Order 13498 seeks to ensure that Federal programs and practices involving grants or contracts to faith-based organizations are consistent with law. As such, the executive director of the White House Office of Faith-Based and Neighborhood Partnerships, who is likewise the executive director of the President's Advisory Council on Faith-Based and Neighborhood Partnerships (also created by Executive Order 13498), may solicit the opinion of the Attorney General for certain legal questions regarding existing or prospective programs or practices. As of the date of this report, President Obama had not issued an Executive order modifying the name or role of USAID's Office of Faith-Based and Community Initiatives, nor had he amended the Bush administration's principles in Executive Order 13279 and the Agency policy it had prompted.

AUDIT OBJECTIVES

The Office of Inspector General conducted this audit to answer the following questions:

- Were USAID-awarded funds used for religious activities?
- Did USAID implement policies and procedures for awards to faith-based and community organizations in accordance with the principles contained in Executive Order 13279?

Appendix I contains a discussion of the audit's scope and methodology.

² The Establishment Clause of the First Amendment to the Constitution reads as follows: "Congress shall make no law respecting an establishment of religion...."

AUDIT FINDINGS

Were USAID-awarded funds used for religious activities?

Some USAID-awarded funds were used for religious activities. The audit surveyed 31 regional legal advisors and 9 of the 10 faith-based organizations that receive the most USAID funding, questioning them on the use of USAID funds for religious activities. From their responses, the audit found that USAID had funded some religious activities, such as the employment of laborers to rehabilitate mosques in Iraq and programs for African youth that provided curriculums on abstinence and behavior change containing Biblical stories and religious messages. However, USAID officials were uncertain of whether such uses of Agency funding violate Agency regulations or the Establishment Clause of the First Amendment to the Constitution. In their view, the relevant legal precedent relating to the separation of church and state and its application overseas—especially in light of foreign policy objectives—complicated the process of making decisions about what activities should or should not be funded.

In urban communities affected by insurgent activities and sectarian violence, USAID's Community Stabilization Program in Iraq has promoted economic and social stability by funding activities such as employment generation and skills training. The primary implementer for the program, International Relief and Development, executed four contracts totaling more than \$325,000 for the rehabilitation of four mosques and adjoining community centers in Fallujah, Iraq. (See table 1.)

Table 1. Excerpt from Project Tracking Sheet

Project Title	City/District	Project End Date	Contracted Cost
Shorta Mosque and Community Center Rehabilitation	Fallujah	8 Jun 07	\$86,846
Jolan Mosque and Community Center Rehabilitation	Fallujah	8 Jun 07	74,447
Jubail Mosque and Community Center Rehabilitation	Fallujah	10 Jun 07	118,553
Al Shuhada Mosque and Community Center Rehabilitation	Fallujah	8 Jun 07	45,492
Total			<u>\$325,338</u>

The program sought benefits from the rehabilitation of the mosques and adjoining community centers. For example, some of the expected benefits from rehabilitating the Al Shuhada Mosque were stimulating the economy, enhancing a sense of pride in the community, reducing opposition to international relief organizations operating in Fallujah, and reducing incentives among young men to participate in violence or insurgent groups. Some of the specific activities funded for the Al Shuhada Mosque included masonry, electrical, and plumbing repairs, the provision of furniture, and the beautification of the mosque's garden.

Section 205.1(d) of title 22 of the Code of Federal Regulations (CFR) prohibits USAID funds from being used for the rehabilitation of structures to the extent that those

structures are used for “inherently religious activities.” The regional legal advisor for USAID/Iraq noted that there might be a legal basis for the activities, such as when the rationale for the projects was job generation. This fact raises a legal issue as to whether an activity intended primarily for job generation is prohibited as being “inherently religious” under 22 CFR § 205.1(d) when it involves refurbishment of a mosque or other religious facility. The question is compounded further in this case by the critical role the program has played in the U.S. Government’s counterinsurgency strategy in Iraq. Agency lawyers in Washington also raised questions about the applicability of the Establishment Clause overseas, especially in light of compelling foreign policy priorities. USAID’s Community Stabilization Program in Iraq is just such a priority. These legal questions need to be answered to properly determine the allowability of the activities.

USAID/Washington officials faced a similar legal quandary involving the curriculums for an Agency program to combat HIV/AIDS—the Abstinence and Behavior Change for Youth Program. The curriculums refer to God and offer Biblical stories and religious messages for optional use in the “Biblical Application” and “Reflection Verse” components of the curriculums. For example, 1 of the 12 sessions in the curriculums is devoted to improving the self-awareness and self-worth of young people so that students of the program might become less vulnerable to sexual exploitation and thus less at risk for HIV. Like the curriculums’ other sessions, the self-awareness and self-worth session contains an optional Biblical application and discussion. It draws on a Bible story about Jesus and Zacchaeus to convey the point that “knowing we are loved and having a good attitude about ourselves help us do good things.” The session also includes a psalm to be used as a “memory verse” for reflection purposes. Both components are allotted 10 minutes in the overall 50-minute session. Other sessions allotted as little as 3 minutes to an optional Biblical application within a 50-minute session.

Figure 1 provides another example of the “Biblical Application” within the curriculums.

Figure 1. Biblical Applications from the Curriculums



Biblical application - 3 minutes (optional)

Verse for reflection or memorization:

Psalms 119: 9
“How can a young man keep his way pure? By living according to your word.”

KEY CONCEPT: God has a plan for sex and this plan will help you and protect you from harm.

The legal question USAID faced about the curriculums stemmed from multiple legal considerations. As the General Counsel noted, overt Christian elements within the curriculums contradicted the Government’s putative neutrality toward religious activities. Accordingly, USAID’s funding of the curriculums could be viewed by some as demonstrating USAID-funded preference for Christianity over other religions or Agency support of Christian ideas.

USAID's lawyers also stated, however, that existing case law is so "fact based" that it does not help them reach conclusions about what generally may or may not be funded. They also raised questions about the applicability of the Establishment Clause overseas, especially in light of compelling foreign policy priorities such as combating the spread of HIV/AIDS. Finally, Agency officials noted that the cultural context in which the curriculums would be used is markedly different from that in the United States, and they stated that such religious references are useful for connecting with the target audience. They explained that the use of religious references can improve the effectiveness of an activity's nonreligious purpose, such as preventing the spread of HIV.

USAID's Office of General Counsel requested guidance from the Department of Justice in the summer of 2007 with respect to Federal funding for activities with religious references domestically and overseas and whether foreign policy priorities justify the Agency's funding of program activities containing religious references. The Agency has not received final guidance.

This was not the first time that USAID sought such guidance. The Agency previously referred another faith-based organization's curriculums—for activities in southern Africa within the same HIV/AIDS prevention program—to the Department of Justice for review. In that instance, the Department responded that the referred curriculums crossed a line, and accordingly the Agency directed that the curriculums not be used.

Almost 2 years have passed since USAID sought guidance from the Department of Justice on the clarification of standards for assessing the permissible role of religion within USAID-funded programs. The uncertainty created by the lack of guidance has broader negative implications for Agency programming, going beyond the curriculums. The Agency faces recurring questions about the applicability of the Establishment Clause overseas. Accordingly, the following finding discusses the need to obtain guidance from the White House.

USAID Should Seek Guidance From the White House on Funding Religious Activities

Summary: Although it has sought guidance from the Department of Justice, USAID remains uncertain about what religious activities it may or may not fund overseas without violating the U.S. Constitution. President Obama created a White House Office to help answer such questions, among its other duties. Because of the delay in receiving guidance from the Department of Justice, the Agency's uncertainty has not been resolved. This uncertainty could broaden the Agency's exposure to legal challenges.

USAID remains uncertain about what religious activities it may or may not fund overseas without violating the Establishment Clause of the First Amendment of the Constitution. For example, the Agency funded worldwide HIV/AIDS-prevention activities that included curriculums containing references to God and Bible stories. Because a legal question arose relating to the use of such religious references in USAID-funded activities, and given the complexity of the legal question, USAID requested guidance from the

Department of Justice's Office of Legal Counsel during the summer of 2007. The Office of Legal Counsel has not yet provided a final response to the Agency.

On February 5, 2009, President Obama issued Executive Order 13498, which amended Executive Order 13199 (January 29, 2001) by replacing Executive Order 13199's White House Office of Faith-Based and Community Initiatives with the White House Office of Faith-Based and Neighborhood Partnerships (the Office). Under Executive Order 13199, the Office was created to ensure that "Federal Government policy decisions and programs are consistent with the President's stated goals with respect to faith-based and other community initiatives." Executive Order 13498 adds another principal function to the Office: "to ensure that services paid for with Federal Government funds are provided in a manner consistent with fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and prohibiting laws respecting an establishment of religion." Insofar as policy determinations need to be made with regard to faith-based activities, the Office is a resource for agencies.

The Office of Legal Counsel's delay in providing guidance in response to USAID's request prevents resolution of the Agency's legal questions about what religious activities may or may not be funded without violating the Establishment Clause of the First Amendment of the Constitution.

Without this guidance, USAID officials are uncertain about funding religious activities overseas and might fund some activities that could raise additional Establishment Clause concerns and could raise the Agency's exposure to legal challenges. Accordingly, the Office of Inspector General makes the following recommendation:

Recommendation 1: We recommend that the Director of the Center for Faith-Based and Community Initiatives, in consultation with the Office of General Counsel, contact the executive director of the White House Office of Faith-Based and Neighborhood Partnerships to obtain legal guidance about what religious activities USAID may or may not fund overseas without violating the Establishment Clause of the First Amendment of the Constitution.

Did USAID implement policies and procedures for awards to faith-based and community organizations in accordance with the principles contained in Executive Order 13279?

Except as noted below, USAID has implemented policies and procedures for its awards to faith-based and community organizations in accordance with the principles that then-President Bush established in Executive Order 13279. Those principles prompted USAID to issue nine regulatory requirements pertaining to the Agency's work with faith-based organizations.³ Appendixes III and IV present those principles and the relevant USAID regulatory requirements.

USAID has implemented decentralized policies and procedures to inform partners of these principles and the Agency's regulatory requirements and to assist in enforcement. However, the Agency should improve the thoroughness and consistency of those policies and procedures, as well as their implementation. Because many of these policies and procedures vary along organizational lines, the following discussion presents them according to organizational elements.

USAID's Center for Faith-Based and Community Initiatives. USAID's Center for Faith-Based and Community Initiatives (the Center) acts as a liaison between faith-based and community organizations and USAID's grantmaking program offices. The Center also provides education on the Bush administration's initiative to promote legal protections for faith-based and community organizations equal to those provided to secular organizations.

The Center conducts outreach efforts to provide information on the initiative, USAID assistance award opportunities, and guidelines on doing business with the Agency. These efforts include one-on-one meetings with nongovernmental organizations as well as presentations to USAID program officers, other Agency personnel, and representatives from faith-based and community organizations. The Center has conducted presentations at missions, seminars, national conferences, and USAID headquarters. The Center's outreach has provided opportunities for partners and USAID employees to learn about protections incorporated within the principles for the Agency and its faith-based partners.

In addition, the Center conducts electronic outreach. The Center's Web site includes information on USAID's rulemaking and a "frequently asked questions" page that addresses questions related to the principles.⁴ This publicly accessible Web site also provides a resource through which partners and potential partners may learn about Executive Orders 13279 and 13280, which established the principles and the Center at USAID, respectively. The Center also distributes a weekly e-mail newsletter to faith-based and community organizations. The Center completed a guidebook for mission directors and staff, containing specific information on the implementation of the principles within the Agency, and it reinforces the message that missions are required to monitor partner compliance with all of the Agency's regulatory requirements for faith-based partners.

³ *Federal Register* (69 FR 61716–24, October 20, 2004); 22 CFR § 205.1.

⁴ "USAID Global Partnerships: Faith-Based and Community Initiatives," available at www.usaid.gov/our_work/global_partnerships/fbci/index.html.

Office of Acquisition and Assistance. According to USAID’s internal policies (Automated Directives System (ADS) chapter 303), the Office of Acquisition and Assistance is responsible for developing and interpreting USAID policy for the award and administration of grants and cooperative agreements. The Office has devised policies and procedures for the award and administration of USAID grants and cooperative agreements to faith-based and community organizations, and these policies and procedures generally agree with the principles.

USAID policies provide Agency employees and the public with information on the principles. ADS 303.3.6.4, Reviewing and Evaluating Applications, paragraph m, is available on the USAID Web site to offer USAID employees and the public some exposure to the principles as they relate to USAID’s grants and cooperative agreements. Similarly, the stated purpose of Acquisition and Assistance Policy Directive 04–08 is to “implement the requirements of Executive Order 13279.” The policy directive also asserts that USAID shall be guided by the principles.

Mandatory standard provisions governing agreements between USAID and faith-based award recipients are set forth by hyperlink at ADS 303.4.2u and ADS 303.4.2v. The provisions provide a mechanism for notifying assistance partners of selected principles embodied in Executive Order 13279. See ADS 303, “Equal Protection of the Laws for Faith-Based and Community Organizations” (February 2004).⁵

Other USAID policies and procedures. Other USAID organizational components employ additional policies and procedures to inform partners of the principles and to enforce partners’ compliance.

The Office of American Schools and Hospitals Abroad manages a program to assist schools, libraries, and medical centers outside the United States, founded or sponsored by U.S. citizens, that serve as study and demonstration centers for ideas and practices of the United States. The Office manages more than 100 grants, of which about 20 are with faith-based organizations. The Office includes a “special requirements” clause in all of its grant agreements to notify partners of safeguards relating to the requirement in 22 CFR § 205.1(b) and to enforce partner compliance. That requirement prohibits the use of USAID funding for inherently religious purposes, such as worship, religious instruction, and proselytization.

Until its incorporation into the Office of Acquisition and Assistance, the Office of Private Voluntary Cooperation managed awards within USAID’s Ocean Freight Reimbursement Program. The program allows recipients to ship goods overseas for use in privately funded programs for development and humanitarian assistance. The program provides grants to approximately 50 U.S. private voluntary organizations annually, of which 35 grants were to faith-based organizations in 2006 and 2007. The program gives potential partners a “request for applications” that contains notifications and prompts certain certifications. A single-page “procurement authorization” form executes the actual award agreement, but the request for applications notifies potential applicants of the requirements and conditions for the award. The request for applications contains text covering nearly all of the principles, and it refers to the portions of the *Federal Register*

⁵ Following fieldwork on this audit, these ADS provisions were renumbered as 303.4.2ab and ADS 303.4.2ac.

that contain both the Executive order and the Final Rule. The notification also provides a hyperlink to a USAID Web page that outlines the requirements in the Final Rule. However, the text does not prohibit the partner from discriminating against beneficiaries or potential beneficiaries of the program on the basis of religion or religious belief, a prohibition set forth in 22 CFR § 205.1(e).

USAID's Office of General Counsel and regional legal advisors have assisted the Agency's program offices by providing legal expertise and by examining whether faith-based partners have complied with Establishment Clause-related requirements in carrying out USAID agreements. For example, in 2007 the Office of General Counsel and regional legal advisors assisted a mission by providing legal expertise and looking into whether faith-based partners were complying with responsibilities under USAID agreements. Upon request, the Office may also review award proposals to ensure that they do not contain prohibited religious activities. These efforts help the Agency respond to and address indications of possible violations of the Establishment Clause. General Counsel sought advice from the Department of Justice when additional expertise was needed.

Nevertheless, the audit identified four areas of opportunity to align USAID policies and procedures more closely with Agency rules implementing the principles, accompanying implementation policies, and the principles themselves. The four areas address (1) the thoroughness of USAID internal directives; (2) the removal of USAID regulations for eligibility and certification; (3) the standardization of clauses to notify awardees of applicable requirements under the initiative; and (4) the modification of awards issued by the Offices of Acquisition and Assistance, Food for Peace, and American Schools and Hospitals Abroad. The four areas for improvement are discussed in detail below.

USAID Internal Directives Should Incorporate All the Requirements of 22 CFR § 205.1

Summary: Implementation policy issued with the final rule that was later codified at 22 CFR § 205.1 directs that USAID's written policies highlight, explain, and incorporate by reference the nine requirements of section 205.1. USAID's internal directives for assistance awards omit some of these requirements and do not reference where they may be found. Because of this inadvertent omission, these internal directives are not compliant with the Agency's own implementation policy and are at variance with executive branch policy.

The *Federal Register's* final notice of changes to USAID regulations implementing Executive Order 13279, later codified at 22 CFR § 205.1, provided implementation policies governing all Federal financial assistance awarded by USAID. Section 205.1 established nine separate regulatory requirements, which were directed by the implementation policy to be highlighted, explained, and incorporated by reference in USAID internal directives.

However, USAID internal policies neither included all nine regulatory requirements nor incorporated part 205 by reference.⁶ ADS 303 sets forth the Agency’s internal guidance, policies, and standards for the award and administration of USAID grants and cooperative agreements to institutions of higher education, hospitals, other nonprofit, nongovernmental organizations, and commercial organizations” (ADS 303.1). Although paragraph m of ADS 303.3.6.4 refers to Executive Order 13279, it does not present all of the nine requirements, nor does it highlight, explain, or incorporate by reference part 205. For example, paragraph m does not refer to requirement (e) in part 205, which says that an organization that participates in programs funded by financial assistance from USAID shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief.

Similarly, the stated purpose of Acquisition and Assistance Policy Directive 04–08 is to “implement requirements of Executive Order 13279.” Such policy directives provide information of significance to all USAID personnel and partners involved in the acquisition and assistance process. The policy directive, however, does not present all of the nine requirements of the Agency’s own regulation, 22 CFR § 205.1. Specifically, like ADS 303.3.6.4, the policy directive does not present the requirement embodied in part 205.1(e), and it omits requirement (b), which prohibits the use of USAID funding for inherently religious purposes such as worship, religious instruction, and proselytization. Nor does the policy directive highlight, explain, or incorporate by reference part 205.

According to an Office of Acquisition and Assistance official, USAID’s assistance and award policies related to faith-based and community organizations were incomplete due to an oversight.

By not incorporating all of the requirements of 22 CFR § 205.1 in USAID’s policies governing assistance awards, the Agency is not complying with its own implementation policy. Furthermore, the omissions create inconsistencies between USAID policy and executive branch policy, which could lead to an erroneous execution of Agency policy at variance with the Executive order. The omission of any reference to part 205, as directed by implementation policy accompanying the Final Rule, may discourage USAID employees’ access to and understanding of the numerous directions and changes included in the Final Rule. For example, the Final Rule elaborates on how the requirements may be waived—a matter not covered in Executive Order 13279. Accordingly, the Office of Inspector General makes the following recommendation:

Recommendation 2: We recommend that, in consultation with the Director of the Center for Faith-Based and Community Initiatives, the Director of the Office of Acquisition and Assistance correct Automated Directives System chapter 303 and Acquisition and Assistance Policy Directive 04–08 to ensure that USAID internal directives highlight, explain, and incorporate by reference all of the requirements of title 22 of the Code of Federal Regulations, section 205.1.

⁶ The requirements of part 205 and 22 CFR § 205.1 are identical.

USAID Regulations for Eligibility and Certification Need Minor Revision

Summary: USAID regulations and Executive Order 13279 prohibit disqualification, as a group, of faith-based organizations applying for USAID funding. Additionally, the Agency's published implementation policies for those regulations direct the removal of Agency regulations that require certain assurances only by religious organizations. However, USAID internal policy refers to the eligibility and certification of faith-based and community organizations as a group. This text, reportedly retained by mistake, sends inappropriate signals about the USAID funding opportunities for faith-based and community organizations.

USAID regulations contained in 22 CFR § 205.1 and principles within Executive Order 13279 assert that faith-based organizations should be able to compete on an equal footing with other organizations for USAID funding. USAID is prohibited by 22 CFR § 205.1(a) from disqualifying organizations from participating in USAID programs on the basis of their religious character or affiliation. Furthermore, implementation policy for those regulations published in the *Federal Register* directs the removal of provisions within USAID regulations that require only USAID-funded religious organizations to provide assurances that they will not use monies or property for inherently religious activities.

The version of ADS 303.3.5.2c(1) in effect when we conducted our fieldwork included the following language regarding the eligibility of applicants for USAID assistance awards⁷:

Clear identification of the types of entities that may apply ... if faith-based and community organizations are eligible, state this (see the Mandatory Provision "Certification of Faith-Based and Community Organizations").

The ADS language implies that, in some circumstances, faith-based and community organizations would be subject to disqualification, as a group, for USAID assistance awards and that, if eligible, a special certification would be required. The mandatory provision stated above did not exist in either the Agency's "Mandatory Standard Provisions for U.S., Non-Governmental Recipients" or its "Mandatory Standard Provisions for Non-U.S., Non-Governmental Recipients" when those documents were checked in June 2008.

According to an Office of Acquisition and Assistance employee, the text alluding to discriminatory treatment of faith-based organizations was retained by mistake.

The phrase "if faith-based and community organizations are eligible" could be read to suggest that such organizations might, as a group, be disqualified from applying for USAID assistance awards. This interpretation would be contrary to the stated intent of executive branch policy that all eligible organizations, including faith-based and other

⁷ This ADS provision was revised on April 10, 2009, to remedy concerns raised in this audit. The predecessor ADS provision, quoted above, is set forth in appendix VI.

community organizations, be able to compete on an equal footing for Federal financial assistance. Similarly, the reference to a certification applicable only to faith-based and community organizations applying for Federal funding implies an unequal treatment and corresponding limitation in assistance opportunities, even if no such certification is actually required. Both references send inappropriate signals and increase the risk of confusion among Agency employees and potential faith-based partners about such organizations' eligibility. Accordingly, the Office of Inspector General makes the following recommendation:

Recommendation 3: We recommend that, to achieve consistency with title 22 of the Code of Federal Regulations, section 205.1, the Director of the Office of Acquisition and Assistance revise Automated Directives System chapter 303 to remove references to both the eligibility of faith-based and community organizations, as a group, and certifications required only of faith-based and community organizations.

Standard Award Clauses Should Incorporate All Requirements of 22 CFR § 205.1

Summary: Published implementation policy for USAID regulations related to faith-based organizations requires that documentation of USAID assistance awards include USAID's nine regulatory requirements. However, USAID's various procedures do not include all of the requirements. These omissions, which occurred because of a lack of oversight, increase the risk that USAID personnel and partners, being uninformed of the requirements, will violate them.

The *Federal Register's* final notice of changes to USAID regulations implementing Executive Order 13279 revised 22 CFR part 205 and established nine requirements (22 CFR § 205.1(a)-(i)). Implementation policy provided with the notice requires that USAID "award documentation for Federal financial assistance will include standard clauses that incorporate the requirements of part 205."⁸

However, USAID's procedures for notifying awardees of requirements embodied in subsections (a)-(i) and for assisting awardees in compliance with the requirements are incomplete and inconsistent. The Agency's mandatory standard provision for non-U.S. and U.S. nongovernmental recipients, "Equal Protection of the Laws for Faith-Based and Community Organizations" (February 2004),⁹ notifies partners of only three of the nine requirements. For example, the standard provision omits any mention that faith-based partners are authorized to participate in Federal programs without impairing their independence, autonomy, expression, or religious character, as required by subsection (c). In addition, the standard provision does not refer partners to 22 CFR § 205.1, where all nine of the requirements are found.

⁸ The requirements of part 205 and 22 CFR § 205.1 are identical.

⁹ The standard provision, "Equal Protection of the Laws for Faith-Based and Community Organizations" (February 2004), may be found through a hyperlink in ADS 303.

USAID's Office of Private Voluntary Cooperation used a different procedure in its grants within the Ocean Freight Reimbursement Program. Instead of using the standard provision, the Office inserted text in its requests for applications that covers nearly all of the requirements and cites the relevant portions of the *Federal Register*. The text also provides a useful hyperlink to a USAID Web page that outlines the requirements in the final notice. However, the text omits any mention of the prohibition on partners' discriminating against program beneficiaries or potential beneficiaries—a requirement set forth in subsection (e).

Finally, the Office of American Schools and Hospitals Abroad, which was not required to use the mandatory standard provision in its grant agreements,¹⁰ instead included "special requirements" relating to the safeguards for faith-based partners in each of its grant agreements. The special requirements address only subsection (b), barring USAID-funded programs from engaging in inherently religious activities. They are silent as to the rest and make no reference to 22 CFR § 205.1.

An official of the Office of Acquisition and Assistance suggested that time constraints may have affected the quality and thoroughness of the standard provision. These constraints also discouraged consideration of and coordination with requirements applicable to the Ocean Freight Reimbursement and American Schools and Hospitals Abroad Programs. The auditors concluded that insufficient oversight led to the incomplete procedures.

By not notifying partners of all the requirements for faith-based organizations, USAID is not complying with the implementation policy published with the final notice. Although the audit did not identify any specific instances, this noncompliance increases the risk that Agency personnel carrying out executive branch policy—as well as faith-based partners and their subpartners—will be uninformed of the requirements and may unwittingly commit a violation. For example, more than half of the Office of American Schools and Hospitals Abroad's program funds are spent on the construction and renovation of schools, hospitals, and other public buildings, but its awards to faith-based partners do not notify grantees, as required, that USAID funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. (See 22 CFR § 205.1(d).) Accordingly, the Office of Inspector General makes the following recommendation:

Recommendation 4: We recommend that, in consultation with the Director of the Center for Faith-Based and Community Initiatives, the Director of the Office of Acquisition and Assistance revise Agency policies and procedures so that the Agency's Federal financial assistance awards include standard clauses to notify awardees of all the requirements of title 22 of the Code of Federal Regulations, section 205.1.

¹⁰ According to a representative from the Office of General Counsel, the Office of American Schools and Hospitals Abroad is not technically classified as a Federal assistance program and, therefore, is not required to follow the same format or use all of the same provisions that other USAID grant agreements use.

Specified Awards Should Be Modified to Include a Standard Clause

Summary: Published implementation policy for USAID regulations related to faith-based organizations requires that documentation of USAID assistance awards include USAID's nine regulatory requirements. USAID erroneously omitted notifications of some or all of the requirements from 30 assistance agreements, totaling \$68 million in Federal assistance. Without such notifications, partners might be unaware of part 205's requirements and violate them.

Published implementation policy for USAID regulations related to faith-based organizations requires that USAID's "award documentation for Federal financial assistance include standard clauses that incorporate the requirements of part 205" (69 FR 61717). USAID's mandatory standard provision, "Equal Protection of the Laws for Faith-Based and Community Organizations" (February 2004), expresses Federal requirements from 22 CFR § 205.1 and notifies recipients of the enforceable terms of the assistance award agreement.¹¹

However, both the Office of Acquisition and Assistance and the Office of Food for Peace were inconsistent in including the standard provision in assistance awards issued to faith-based partners. The Office of American Schools and Hospitals Abroad did not use the standard provision in its agreement but instead used "special requirements," which provide less notification of the nine requirements than does the standard provision. In FY 2006 and 2007, USAID issued 30 awards (46 percent of the 65 awards tested, totaling \$68 million in financial assistance to faith-based organizations) with incomplete notification of the nine requirements of 22 CFR § 205.1. (See table 2; also, appendix V contains detailed information on testing results for each awarding office.)

Table 2. Award Testing Results

Issuing Office	Awards Providing Incomplete Notification	Amount of the Awards
Office of Acquisition and Assistance	11	\$57,531,889
Office of Food for Peace	8	3,410,006
Office of American Schools and Hospitals Abroad	11	7,335,000
Total	<u>30</u>	<u>\$ 68,276,895</u>

The omission of complete notification in assistance awards to faith-based organizations resulted from error and insufficient communication among USAID's offices implementing assistance awards, particularly the Offices of Acquisition and Assistance, Food for Peace, and American Schools and Hospitals Abroad. A policy representative from the Office of Acquisition and Assistance characterized the Office's issuance of awards not containing the standard provision as an oversight and was unable to account for the discrepancy in implementation among the awarding offices.

¹¹ The nine requirements of part 205 and 22 CFR § 205.1 are identical.

Because faith-based organizations were not notified of the requirements associated with financial assistance awards, partners' awareness of and compliance with Federal requirements could be adversely affected. Additionally, if the partners were found not to have complied with the requirements, compliance would be difficult to enforce.

Accordingly, the Office of Inspector General makes the following three recommendations to correct the awards that did not provide complete notification of the requirements stated in 22 CFR § 205.1.

Recommendation 5: We recommend that, to achieve consistency with procedural changes prompted by recommendation 4, the Director of the Office of Acquisition and Assistance modify the 11 assistance award agreements (listed in appendix V of this audit report) to include a standard clause in each that incorporates the requirements stated in title 22 of the Code of Federal Regulations, section 205.1.

Recommendation 6: We recommend that, to achieve consistency with procedural changes prompted by recommendation 4, the Director of the Office of Food for Peace modify the eight assistance award agreements (listed in appendix V of this audit report) to include a standard clause in each that incorporates the requirements stated in title 22 of the Code of Federal Regulations, section 205.1.

Recommendation 7: We recommend that, to achieve consistency with procedural changes prompted by recommendation 4, the Director of the Office of American Schools and Hospitals Abroad modify the 11 assistance award agreements (listed in appendix V of this audit report) to include a standard clause in each that incorporates the requirements stated in title 22 of the Code of Federal Regulations, section 205.1.

EVALUATION OF MANAGEMENT COMMENTS

Upon evaluation of management's response to the draft report, this audit determined that final action has been taken on recommendations 1 and 6, and management decisions have been reached on recommendations 2, 3, 4, 5, and 7.

Recommendation 1. Management provided extensive comments in response to recommendation 1, which answered the audit objective's question, "Were USAID-awarded funds used for religious activities?" The report concluded that "some USAID-awarded funds were used for religious activities." This statement led management to be concerned that an unwarranted conclusion had been reached, due to the complex nature of the Establishment Clause, and they provided extensive clarification from various legal cases pertaining to this issue. This audit does not dispute the fact that questions concerning Establishment Clause issues are highly complex and need to be viewed on a case-by-case basis. Nor does this audit try to determine the legality of religiously infused programming sponsored by the Agency. Instead, the conclusion that USAID-awarded funds were used for religious activity was drawn simply from the responses provided by the Agency's regional legal advisors and identified by the examples cited in this report.

On April 19, 2009, USAID/Iraq disallowed \$44,531 of reimbursement for specific work performed on the four mosques. The contractor has disputed this disallowance, and the matter is under review by General Counsel for final determination.

Management met the intent of recommendation 1 by meeting with a representative of the White House Office of Faith-Based and Neighborhood Partnerships on April 21, 2009, to discuss issues raised by the audit. Therefore, this recommendation is closed upon issuance of this report.

Recommendations 2, 3, 4, 5, and 7. In regard to recommendations 2 and 3, management agreed to revise ADS 303 to be consistent with all the requirements of 22 CFR part 205 and to remove any language that might imply that faith-based and community organizations are ineligible as a group for USAID assistance awards. In recommendation 4, management agreed to notify recipients of all the requirements of 22 CFR part 205. Recommendations 5 and 7, pertaining to award modification, will be implemented, with the exception of two American Schools and Hospitals Abroad program awards that have expired. On the basis of management actions, management decisions have been reached on recommendations 2, 3, 4, 5, and 7.

Recommendation 6. Finally, in response to recommendation 6, management stated that seven of the eight awards under the Food for Peace program have now expired. The eighth award, concerning ocean freight charges for nonemergency commodities, was under a multiyear agreement that will expire on September 30, 2009; Food for Peace will not modify this award retroactively. In addition to the audit's recommendation, management has agreed that all new Food for Peace awards will contain the mandatory standard provisions, upon revision by Office of Acquisition and

Assistance, which Food for Peace understands will be completed by the end of the 2009 calendar year. On the basis of an evaluation of management's response to the draft report, this recommendation is closed upon issuance of this report.

Management comments are presented in their entirety in appendix II of this report.

SCOPE AND METHODOLOGY

Scope

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, in accordance with our audit objective. We believe that the evidence obtained provides this reasonable basis. The purpose of the audit was to determine whether USAID-awarded funds were used for religious activities and to assess whether USAID has implemented policies and procedures for awards to faith-based and community organizations in accordance with the principles contained in Executive Order 13279.

The audit fieldwork was performed from April 2008 to March 2009 in Washington, DC, at USAID's Center for Faith-Based and Community Initiatives and the Offices of Acquisition and Assistance, General Counsel, American Schools and Hospitals Abroad, Food for Peace, and Private Voluntary Cooperation. We also contacted 9 of the 10 faith-based organizations that received the most USAID funding and all 31 regional legal advisors in the field. The following criteria were used to assess USAID's administration of its awards to faith-based organizations: Executive orders, particularly the principles in Executive Order 13279; the Code of Federal Regulations; implementation policy issued at 69 FR 61717-18, accompanying issuance of the Final Rule later codified at 22 CFR 205; USAID's Automated Directives System; and the Office of Management and Budget's scorecard standards for success of the Bush administration's Faith-Based and Community Initiative.

USAID's Center for Faith-Based and Community Initiatives reported that the amount USAID had awarded to faith-based groups rose from \$552 million in fiscal year (FY) 2006 to \$586 million in FY 2007. In FY 2006 and 2007, the period subject to audit, 136 faith-based organizations held a total of 512 assistance awards. To determine USAID's compliance with Federal requirements for assistance awards, we relied on the evaluation of USAID policies and procedures compared with the above-mentioned criteria, and we tested USAID's active awards. From a pool of 512 awards, we randomly selected 91 awards issued from USAID/Washington that had been made to unique faith-based partners. We examined 65 of the 91 awards.¹² These 65 awards were active during FY 2006 and 2007 and during the date of testing. Our audit findings and associated recommendations for improving the administration of USAID's assistance awards resulted from the evaluation of criteria, USAID policies and procedures, and active USAID awards to faith-based organizations.

¹² The number of awards tested was reduced from 91 to 65, accounting for closed awards and purchase requisitions issued by the Office of Private Voluntary Coordination. The purchase requisitions used a process different from that of the other assistance awards tested.

Methodology

To answer the first audit objective, we surveyed 9 of the 10 faith-based organizations that received the most USAID funding and all 31 of USAID's regional legal advisors in the field. We asked the faith-based organizations whether they had engaged in inherently religious activities using USAID-provided funding. We also asked the regional legal advisors about their awareness of any facts or allegations from which they might reasonably infer that USAID-funded programs had used USAID-awarded funds for religious activity.

To answer the second audit objective, we used a three-phased audit approach for fieldwork: gathering information on awards, identifying and testing USAID's policies and procedures for administering assistance awards, and designing and administering a survey of faith-based organizations to evaluate the effectiveness of USAID's policies and procedures.

During the first phase of fieldwork, staff from USAID's Center for Faith-Based and Community Initiatives provided us with information on awards made to faith-based organizations that were active during FY 2006 and 2007. Staff from the Office of Acquisition and Assistance helped us understand and sort the data. We also consulted with the Office of Inspector General's statistician to identify methods for sampling the awards. We gathered award and partner contact information for the implementing Offices of Acquisition and Assistance, American Schools and Hospitals Abroad, Food for Peace, and Private Voluntary Cooperation.

In the second phase of fieldwork, we identified USAID's policies and procedures for faith-based and community partners related to the principles of Executive Order 13279, incorporated as requirements by title 22 of the Code of Federal Regulations, part 205. We identified policies and procedures of the Office of Assistance and Acquisition, the Center for Faith-Based and Community Initiatives, and the Office of General Counsel, as well as the implementing offices mentioned above. We analyzed these policies and procedures to determine whether they were in compliance with the requirements of the Executive order and part 205. We considered monitoring procedures and inquired whether any instances of noncompliance had occurred in existing awards during the audit period. In coordination with the first phase of our fieldwork, we then tested 65 award files to evaluate USAID's implementation of its procedures as derived from the Agency's Automated Directives System, Chapter 303: Grants and Cooperative Agreements to Non-Governmental Organizations, and the inclusion of notification for Federal assistance awards in accordance with 22 CFR § 205.1 and the principles of Executive Order 13279.

MANAGEMENT COMMENTS



June 15, 2009

TO: IG/A/PA, Steven H. Bernstein

THROUGH: M/OAA/OD, Jean Horton

FROM: Acting Director, Center for Faith-Based and Community Initiatives,
Mauricio Vera
Director, Office of Acquisition and Assistance, Maureen Shauket
Director, Office of Food for Peace, Jeffrey M. Borns
Director, Office of American Schools and Hospitals Abroad,
George E. Like

SUBJECT: Draft Management Response to Draft Audit of USAID's Faith-Based and Community Initiatives

Thank you for the opportunity to respond to the draft audit report.

The issues raised in this report are not unique to the implementation of the Faith-Based and Community Initiatives. The challenge in most policy changes impacting the use of government funds is ensuring that they are implemented correctly at the grant and contract level. We appreciate the opportunity to clarify and improve USAID's policies and procedures with regard to grants with faith-based organizations. We would also like to clarify that while this audit report focuses on USAID's work with faith-based organizations, the Center for Faith-Based and Community Initiatives (CFBCI) itself serves to better inform and equip small- and medium-sized secular community-based organizations as well faith-based organizations working at the grassroots level.

While Recommendations 2 through 7 are relatively straightforward and will indeed be complied with, we are concerned that Recommendation 1 reaches an unwarranted conclusion regarding the very complex Establishment Clause legal questions that have been raised by certain programmatic activities undertaken by the Agency. We will address the specific programmatic situations below in our response to Recommendation 1, where we demonstrate that the draft audit report's conclusion that "some USAID funds were used for religious activities" is not supported by the record. We also demonstrate that the audit findings leading to Recommendation 1, relating to a request for guidance from the White House Office of Faith-Based and Neighborhood Partnerships (FBNP) "to resolve its legal question related to what programs it may or may not fund" and to determine the "compelling foreign policy priorities" that would enable the Agency to avoid

Establishment Clause restrictions, similarly are unwarranted. The Constitutionality of USAID programs overseas can only be determined on a case by case basis and thus there can be no “one size fits all” legal resolution of this question. In addition, unless and until a particular fact pattern is litigated, it remains speculation as to whether the requisite compelling foreign policy reason for providing funding exists and therefore whether USAID funds were used for “religious activities” that would be impermissible under the Agency’s Final Rule on Participation by Religious Organizations in USAID Programs (Agency Rule) and the Establishment Clause. Nevertheless, we confirm that we will, consistent with Recommendation 1, continue to be in contact with the White House FBNP Office on the very complex Establishment Clause issues that are raised by certain programmatic activities undertaken by the Agency.

Below are the management decisions regarding the proposed audit recommendations:

Recommendation No. 1: “We recommend that the Director of the Center for Faith-Based and Community Initiatives, in consultation with the Office of the General Counsel, contact the executive director of the White House Office of Faith-Based and Neighborhood Partnerships to obtain legal guidance about what religious activities USAID may or may not fund overseas without violating the Establishment Clause of the First Amendment of the Constitution.”

Management Decision:

We consider this recommendation closed because the Director of the Center for Faith-Based and Community Initiatives met with a representative of the White House FBNP Office on April 21, 2009 to discuss the issues raised by the audit. Moreover, as stated above, USAID intends to continue to be in contact with the White House FBNP Office on this and other related issues.

Nevertheless, we must point out that the conclusion in the draft audit report that “USAID-awarded funds were used for religious activities” in connection with rehabilitation of four mosques in Iraq in 2007 and in HIV/AIDS prevention programs is not supported by the record. As discussed below, the vast majority of these funds were used for secular activities and, thus, USAID funding actions violated neither the Establishment Clause, applicable case law, Executive Order 13279, nor relevant provisions of the Agency Rule. USAID/Iraq disallowed a small amount of the expenditures related to rehabilitation activities at two of the four mosques since the grantee was unable to sufficiently establish that the costs were not “inherently religious” in nature. Disallowance by USAID of these costs rebuts the draft audit report conclusion that the funds were used for religious activities.

The Iraq work in question was performed between April 10 and June 10, 2007, immediately following a period where insurgents had damaged or destroyed, among other facilities, local community centers and garden areas linked to or associated with the four mosques. Rehabilitation of these facilities was undertaken pursuant to USAID’s Community Stabilization Program (CSP). CSP was an important component of the USG strategy for revitalizing Iraq. It was a key element of the larger, interagency Focused Stabilization Program, which brought economic and social stability to urban communities impacted by insurgent activities and sectarian violence.

The purpose of funding the activities in question was to support the rehabilitation of

portions of buildings belonging to mosques that were utilized as community centers for youth activities and adult education and that provided social services to the community, including food and non-food assistance to the needy. These facilities also supported the establishment of adult literacy training and localized vocational training courses (sewing and seamstress) for youth and women. Intended benefits of the rehabilitation of these facilities was employment generation and to gain support of religious, community and tribal leaders in order to facilitate the expansion of economic development activities in Fallujah.

Neither Executive Order 13279, issued by President Bush on December 12, 2002 and entitled Equal Protection of the Laws for Faith-based and Community Organizations, nor applicable case law views rehabilitation of religious structures as an inherently religious activity. More specifically, Executive Order 13279 provides as examples of inherently religious activities “worship, religious instruction, and proselytization.” This view is consistent with judicial decisions on this subject. See, e.g., Christianson v. Leavitt, 482 F. Supp. 2d 1237 (W.D. Wash. 2007), which held that a marriage counseling program that had made adjustments to its previously Bible-based curriculum by deleting all religious references and discussion was not “inherently religious” and Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County Public Schools, 373 F. 3d 589 (4th Cir. 2004), which held that requiring children to take home religious flyers, albeit without overtly religious language, was not an “inherently religious activity.” In the Child Evangelism decision, the Court identified a number of activities that it would consider “inherently religious,” such as being forced to read the Bible or to pray or being forced to sit by while other students or faculty pray.

The educational and vocational activities for which the rehabilitated community centers in Iraq will be utilized are not “inherently religious” but, rather, are of a secular nature. Moreover, there is no suggestion in any of the documentation reviewed that these centers were to be used for worship, religious training or proselytizing, or that anyone would be forced to read religious materials and/or pray in those centers. The mere fact that these community centers were linked to or associated with mosques does not convert vocational training and literacy classes into sectarian activities.

Since these activities cannot be characterized as “religious activities” or “inherently religious activities,” the question then is whether the fact that the centers were linked to or associated with mosques and/or whether some rehabilitation of the mosques themselves took place results in violation of the Establishment Clause or violation of the Agency Rule.

As reflected in Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530 (2000), a majority of the U.S. Supreme Court no longer supports the principle that assistance to a pervasively sectarian institution, such as a mosque, is per se a violation of the Establishment Clause of the First Amendment to the U.S. Constitution. Legal analysis in this area no longer focuses on the motives and actions of the aid recipient, but instead focuses on those of the Government. In other words, it is the purpose of the assistance, rather than the nature of the recipient of the assistance that is determinative. In the Iraq case, the purpose of the assistance was secular, i.e., to repair facilities that were important to community leaders for employment generation, and to facilitate the expansion of economic development activities. The fact that the community centers were linked to or associated with mosques was of no legal import.

This conclusion is supported by opinions issued by the Office of Legal Counsel at the Department of Justice (OLC/DOJ). OLC/DOJ is tasked with providing legal advice to the Executive Branch on all constitutional questions. For example, in September 2002 OLC/DOJ determined that disaster assistance provided by FEMA to the Seattle Hebrew Academy following the Nisqually earthquake did not violate the Establishment Clause. Similarly, in April 2003 OLC/DOJ determined that grants provided by the Department of the Interior to the Old North Church in Boston for historic preservation did not violate the Establishment Clause.

Further, the Iraq rehabilitation does not violate the Agency Rule. 22 CFR 205.1(d) provides that USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used for inherently religious activities only to the extent that those structures are used for conducting eligible activities. 22 CFR 205.1(d) also notes that “sanctuaries, chapels or other rooms that a USAID-funded religious congregation uses as its principal place of worship, however, are ineligible for USAID-funded improvements.” Of the approximately \$330,000 spent on the rehabilitation in question, only approximately \$44,531 was found to be attributable to work performed on the mosques. Accordingly, USAID/Iraq disallowed that amount for reimbursement to the contractor that performed the work. By disallowing the expenditures that were incurred while rehabilitating two of the four mosques, the USAID Mission in Iraq complied fully with this section of the Agency Rule.

USAID’s “HIV/AIDS Prevention through Abstinence and Health Choices for Youth” (ABY) program is designed to “expand activities in support of abstinence-until-marriage, fidelity in marriage and monogamous relationships, and avoidance of unhealthy behaviors among youth aged 10-24.” USAID entered into fourteen cooperative agreements under this program with both secular and faith-based organizations. To our knowledge, those organizations developed approximately 77 curricula under these agreements, many of which were secular in nature. However, some of the curricula reflect a religious perspective and include religiously infused materials and religious references as a way of conveying HIV/AIDS prevention messages. An example of such references is the text from one such curriculum that is referred to in the draft audit report. Faith-based groups representing different faiths received ABY agreements, a fact that may not be clear in the draft audit report. These groups developed curricula that are reflective of these faiths that were used in HIV/AIDS prevention activities in their community. Therefore, the Agency does not concur with the statement that “USAID’s funding of the curricula could be viewed by some as demonstrating USAID-funded preference for Christianity over other religions or Agency support of Christian ideas.”

Due to the complex nature of this constitutional issue, the Agency properly sought the advice of OLC/DOJ. When OLC/DOJ provided advice that an HIV/AIDS curriculum in question was not consistent with the Agency’s Rule, USAID informed the recipient that the curricula could not be used in USAID programs. We note that OLC/DOJ has been responsive to the Agency’s requests for guidance. Since the time of the initial request, USAID/GC, along with the State Department Office of the Legal Advisor, has been engaged in on-going discussions with OLC/DOJ regarding the content of other curricula, including the one quoted from in the audit report, and other related legal questions. Agency officials will continue efforts to seek further clarity on this issue with OLC/DOJ.

The draft audit report suggests that USAID lawyers were unable to reach legal conclusions on the Constitutional permissibility of funding of some religious activities

because they could not decide whether the activities themselves rose to the level of “compelling foreign policy priorities.” Accordingly, the draft audit report recommends that USAID consult with the White House FBNP Office to resolve legal questions related to what program activities USAID could or could not fund.

The draft audit report appears to be referring to dictum contained in Lamont v. Woods, 948 F. 2nd 825, 842 (2nd Cir. 1991). In that case, although the Court of Appeals held that the Establishment Clause was applicable to USAID grants to foreign religious schools abroad, the Court also stated that the Government should be permitted to demonstrate some compelling reason why the usually unacceptable risk attendant on funding such institutions should, in a particular case, be borne. In other words, the Court acknowledged that there may be circumstances which could warrant overriding the usual Establishment Clause presumption. However, by suggesting that the compelling foreign policy interests question could be ultimately resolved by the White House FBNP Office, the draft audit report does not fully take into account applicable case law and the judicial process. USAID may well conclude that its stabilization activities in Iraq in 2007, as well as its HIV/AIDS prevention activities, constitute compelling reasons articulated by the Court for override of Establishment Clause jurisprudence. (In fact, we believe that USAID would indeed make this argument for all of its activities in Iraq and its HIV/AIDS prevention activities, as opposed to the school program considered by the Court in Lamont.) The White House FBNP Office, too, may well reach the same conclusion. Nevertheless, it ultimately is at the discretion of the courts as to whether a particular fact pattern will be considered a “compelling” foreign policy interest sufficient to override Establishment Clause concerns and permit U.S. Government funding which advances religion, endorses religion or otherwise entangles the U.S. Government with religion. Unless and until such a fact pattern is litigated, it remains speculation as to whether the requisite compelling reason exists.

We also note that President Obama’s Executive Order setting up the new White House FBNP Office provides that to ensure Federal programs involving faith-based organizations are consistent with law, the White House FBNP Office may seek the opinion of the Attorney General. By contacting OLC/DOJ with respect to its HIV/AIDS prevention activities, USAID has taken the same actions suggested in the Executive Order. We would expect that the White House FBNP Office also may contact OLC/DOJ with respect to USAID programmatic issues. Nevertheless, as recommended in the draft audit report, USAID will continue to be in contact with the White House FBNP Office on these and future related issues.

Target Date: Again, we consider this recommendation closed because the Director of the Center for Faith-Based and Community Initiatives met with a representative of the White House FBNP Office on April 21, 2009 to discuss the issues raised by the audit. Moreover, as stated above, USAID intends to continue to be in contact with the White House FBNP Office on this and other related issues. In addition to these interactions, when the final audit report is published, the Director will transmit a copy of the final report to the Executive Director of the White House Office of Faith-Based and Neighborhood Partnerships.

Recommendation No. 2: “We recommend that, in consultation with the Director of the Center for Faith-Based and Community Initiatives, the Director of the Office of

Acquisition and Assistance correct Automated Directives System chapter 303 and Acquisition and Assistance Policy Directive 04–08 to ensure that USAID internal directives highlight, explain, and incorporate by reference all of the requirements of Title 22 of the Code of Federal Regulations, Section 205.1.”

Management Response: OAA Policy will revise ADS 303 to be consistent with and present all the requirements of 22 CFR Part 205. **Target Date:** December 31, 2009.

Recommendation No. 3: “We recommend that, to achieve consistency with Title 22 of the Code of Federal Regulations, Section 205.1, the Director of the Office of Acquisition and Assistance revise Automated Directives System chapter 303 to remove references to both the eligibility of faith-based and community organizations, as a group, and certifications required only of faith-based and community organizations.”

Management Response: OAA Policy will revise ADS 303 to remove any language that implies that Faith Based and Community Organizations are ineligible as a group for USAID assistance awards. **Target Date:** December 31, 2009.

Recommendation No. 4: “We recommend that, in consultation with the Director of the Center for Faith-Based and Community Initiatives, the Director of the Office of Acquisition and Assistance revise Agency policies and procedures so that the Agency’s Federal financial assistance awards include standard clauses to notify awardees of all the requirements of Title 22 of the Code of Federal Regulations, Section 205.1.”

Management Response : OAA Policy in consultation with the Director of the Center for Faith-Based and Community Initiatives will revise current assistance standard provisions or draft new standard provisions that will notify recipients of all of the requirements of 22 CFR Part 205. **Target Date:** December 31, 2009

Recommendation No. 5: “We recommend that, to achieve consistency with procedural changes prompted by recommendation 4, the Director of the Office of Acquisition and Assistance modify the 11 assistance award agreements (listed in appendix V of this audit report) to include a standard clause in each that incorporates the requirements stated in Title 22 of the Code of Federal Regulations, Section 205.1.”

Management Response: OAA will issue a bulletin for the cognizant branches in OAA Operations to amend grants to include the Standard Provision (as revised above) for the “Equal Protection of the Law for Faith-based and Community Organizations” when otherwise amending the grant. **Target Date:** December 31, 2009.

Recommendation No. 6: “We recommend that, to achieve consistency with procedural changes prompted by recommendation 4, the Director of the Office of Food for Peace modify the eight assistance award agreements (listed in appendix V of this audit report) to include a standard clause in each that incorporates the requirements stated in Title 22 of the Code of Federal Regulations, Section 205.1.”

Management Response:

FFP understands that, by the end of the 2009 calendar year, OAA intends to complete the revision to the Agency policies and procedures so that the Agency's Federal financial assistance awards include standard clauses to notify awardees of all the requirements of Title 22 of the Code of Federal Regulations, Section 205.1.

- Given that OAA has not revised the Agency policies and procedures so that assistance awards include standard clauses to notify awardees of all requirements of Title 22 of the Code of the Federal Regulations, Section 205.1, FFP would be required to wait to resolve the recommendation 6.
- The audit found that FFP issued 8 of 14 assistance award agreements (or 57 percent of the awards audited) without the mandatory standard provision during FY 2006 and 2007 – approximately \$3.4 million (or 85 percent of the \$4 million disbursed under awards audited.)
 - As of May 21, 2009, seven of the eight assistance awards have expired. FFP will not modify these awards retroactively.
 - The eighth award (Caritas del Peru, FFP-G-00-07-00027-00) is a procurement authorization for ocean freight charges associated with supplying non-emergency commodities under the multi-year agreement FFP-A-00-02-00023-00 dated December 11, 2001, which ended on April 30, 2009. No standard provisions have been attached to these procurement authorizations because they are awarded only in connection with multi-year agreements. FFP will not modify this award retroactively.
- To ensure compliance in the future, FFP has reviewed its award template and no longer includes the standard provisions in the template. Instead, FFP prints standard provisions from the Agency website as an attachment to all awards to ensure that the standard provisions are consistent and up-to-date with standard operating procedures. Thus, all new FFP awards will contain the mandatory standard provisions after the revision by OAA to the Agency policies and procedures that include standard clauses to notify awardees of all requirements of Title 22 of the Code of the Federal Regulations, Section 205.1. **Target Date:** January 30, 2010.

Recommendation No. 7: “We recommend that, to achieve consistency with procedural changes prompted by recommendation 4, the Director of the Office of American Schools and Hospitals Abroad modify the 11 assistance awards agreements (listed in appendix V of this audit report) to include a standard clause in each that incorporates the requirements stated in Title 22 of the Code of Federal Regulations, Section 205.1.”

Management Response: Of the 11 awards listed, 2 have expired (HSH-G-00-05-00027-02 and HSH-G-00-05-00025-01). The Office of American Schools and Hospitals Abroad will modify as recommended those listed non-expired grants. **Target Date:** January 30, 2010

Executive Order 13279

Principles

Executive Order 13279, “Equal Protection of the Laws for Faith-Based and Community Organizations,” sets forth the following six fundamental principles to be employed by Federal agencies in administering its awards to faith-based organizations:

Sec. 2. Fundamental Principles and Policymaking Criteria.

In formulating and implementing policies that have implications for faith-based and community organizations, agencies that administer social service programs supported with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible;

(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other community organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs;

(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs;

(d) All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice;

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution. Therefore, organizations that engage in inherently religious activities, such as worship, religious instruction, and proselytization, must offer those services separately in time or location from any programs or services supported with direct Federal financial assistance, and participation in any such inherently religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance; and

(f) Consistent with the Free Exercise Clause and the Free Speech Clause of the Constitution, faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without

impairing their independence, autonomy, expression, or religious character. Accordingly, a faith-based organization that applies for or participates in a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for or participates in a social service program supported with Federal financial assistance may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other chartering or governing documents.

22 CFR § 205.1 Requirements

Section 205.1 of title 22 of the Code of Federal Regulations (CFR)—set forth under part 205, Participation by Religious Organizations in USAID Programs—delineates the following nine requirements governing USAID’s awards to faith-based organizations:

§ 205.1 Grants and cooperative agreements.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in any USAID program for which they are otherwise eligible. In the selection of service providers, neither USAID nor entities that make and administer sub-awards of USAID funds shall discriminate for or against an organization on the basis of the organization’s religious character or affiliation. As used in this section, the term “program” refers to Federally funded USAID grants and cooperative agreements, including sub-grants and sub-agreements. The term also includes grants awarded under contracts that have been awarded by USAID for the purpose of administering grant programs. As used in this section, the term “grantee” includes a recipient of a grant or a signatory to a cooperative agreement, as well as sub-recipients of USAID assistance under grants, cooperative agreements and contracts.

(b) Organizations that receive direct financial assistance from USAID under any USAID program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services directly funded with direct financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. These restrictions on inherently religious activities do not apply to programs where USAID funds are provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers, or where USAID funds are provided to religious or other organizations for programs in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.

(c) A religious organization that participates in USAID-funded programs or services will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, a religious organization that receives financial assistance from USAID may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization’s name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other governing documents.

(d) USAID funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. USAID funds may be used for the acquisition, construction, or rehabilitation of structures

only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, USAID funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USAID funds in this part. Sanctuaries, chapels, or other rooms that a USAID-funded religious congregation uses as its principal place of worship, however, are ineligible for USAID-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition. (See 22 CFR part 226.)

(e) An organization that participates in programs funded by financial assistance from USAID shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief.

(f) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall require only religious organizations to provide assurances that they will not use monies or property for inherently religious activities. Any such restrictions shall apply equally to religious and secular organizations. All organizations that participate in USAID programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in inherently religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in Sec. 702(a) of the Civil Rights Act of 1964, [42 U.S.C. 2000e-1](#), is not forfeited when the organization receives financial assistance from USAID.

(h) Many USAID grant programs require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. Grantees should consult with the appropriate USAID program office to determine the scope of any applicable requirements. In USAID programs in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under [section 501\(c\)\(3\) of the Internal Revenue Code](#);

(2) A statement from a state taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

- (ii) No part of its net earnings may lawfully benefit any private shareholder or individual;
 - (3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or
 - (4) Any item described in paragraphs (b)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.
- (i) The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

ACCOUNT OF AWARDS

In support of the audit finding “Specified Awards Should Be Modified to Include a Standard Clause,” the following list identifies testing results for assistance awards issued to faith-based organizations by USAID offices. The list identifies awards for which documentation demonstrates deficiencies in partner notification of the requirements of title 22 Code of Federal Regulations, part 205.

The 65 assistance-award agreements audited included 40 award agreements issued by USAID’s Office of Acquisitions and Assistance, 14 award agreements issued by USAID’s Food for Peace Program, and 11 award agreements issued by USAID’s Office of American Schools and Hospitals Abroad.

Office of Acquisition and Assistance. USAID’s Office of Acquisitions and Assistance issued 11 of 40 assistance-award agreements (or 28 percent of the awards audited) without the mandatory standard provision during fiscal years (FY) 2006 and 2007—approximately \$58 million (41 percent of the \$140 million disbursed under awards audited):

Faith-Based Partner	Award Number	Amount Awarded (Including Modifications)
1. Christian Children’s Fund, Inc.	DFD-A-00-04-00189-02	\$869,196
2. Adventist Development and Relief Agency International	DFD-G-00-06-00107-00	2,265,133
3. Samaritan’s Purse	DFD-G-00-06-00117-00	3,249,557
4. Aga Khan Foundation	GHS-A-00-03-00015-03	1,386,480
5. Salvation Army	GHS-A-00-05-00033-03	825,000
6. African Methodist Episcopal Service and Development Agency	GHS-A-00-05-00034-02	1,028,838
7. Hope Worldwide	GPO-A-00-05-00014-03	5,585,608
8. Christian Aid	GPO-A-00-05-00021-02	3,846,245
9. Marquette University	HFM-G-00-01-00134-06	3,492,000
10. World Vision Relief and Development, Inc.	HRN-A-00-98-00053-13	24,991,601
11. International Foundation for Education and Self-Help	RLA-A-00-03-00010-04	9,992,231
Total Amount Awarded		\$57,531,889

Office of Food for Peace. USAID’s Office of Food for Peace issued 8 of 14 assistance award agreements (or 57 percent of the awards audited) without the mandatory standard provision during FY 2006 and 2007—approximately \$3.4 million (or 85 percent of the \$4 million disbursed under awards audited):

Faith-Based Partner	Award Number	Amount Awarded (Including Modifications)
1. Food for the Hungry	FFP-A-00-02-00010-09	\$863,008
2. World Vision International	FFP-A-00-03-00079-07	735,642
3. Fabretto Children’s Foundation, Inc.	FFP-G-00-02-00096-04	472,919

4. Haiti Vision, Inc.	FFP-G-00-04-00087-02	184,800
5. Child Life International	FFP-G-00-05-00102-01	198,000
6. Healing Hands International	FFP-G-00-06-00052-00	96,400
7. Church of Bible Understanding	FFP-G-00-06-00059-00	49,637
8. Caritas Del Peru	FFP-G-00-07-00027-00	809,600
Total Amount Awarded		\$3,410,006

Office of American Schools and Hospitals Abroad. USAID's Office of American Schools and Hospitals Abroad issued 11 of 11 assistance-award agreements (or 100 percent of the awards audited) without complete notification of the requirements within Title 22 of the Code of Federal Regulations, part 205, during FY 2006 and 2007—approximately \$7.3 million (or 100 percent of the dollars disbursed under awards audited):

Faith-Based Partner	Award Number	Amount Awarded (Including Modifications)
1. American Committee for Shaare Zedek Hospital in Jerusalem, Inc.	HSH-G-00-07-00017-00	\$400,000
2. Chicago Province of the Society of Jesus	HSH-G-00-06-00023-00	600,000
3. Crippled Children's United Rehabilitation Effort	HSH-G-00-06-00021-00	900,000
4. Friends United Meeting	HSH-G-00-06-00024-00	1,150,000
5. Medical Benevolence Foundation	HSH-G-00-05-00032-01	675,000
6. Nazareth Project, Inc.	HSH-G-00-03-00026-02	1,350,000
7. Salesian Missions of the Salesian Society, Inc.	HSH-G-00-06-00004-00	400,000
8. Uganda Christian University Partners	HSH-G-00-05-00027-02	900,000
9. United Board for Christian Higher Education in Asia	HSH-G-00-06-00026-00	300,000
10. United Methodist Committee on Relief	HSH-G-00-05-00025-01	300,000
11. Vellore Christian Medical College Board USA, Inc.	HSH-G-00-07-00002-00	360,000
Total Amount Awarded		\$7,335,000

ADS 303.3.5.2c Eligibility Information

This appendix sets forth the version of ADS 303.3.5.2c in effect during audit fieldwork, prior to the April 10, 2009 revision.

ADS 303.3.5.2 Request for Applications.

c. Section III, Eligibility Information, must address considerations or factors that make an applicant or application eligible or ineligible for consideration. This section must include the following:

(1) Clear identification of the types of entities that may apply. If there are no restrictions, indicate that all potential applicants may apply, and if faith-based and community organizations are eligible, state this (see the Mandatory Provision “Certification of Faith-Based and Community Organizations”);

(2) A statement to the effect that USAID encourages applications from potential new partners;

(3) The cost sharing element and whether it is required or suggested, as applicable (see [303.3.10](#)). If there is no cost sharing requirement, or if there are any special conditions regarding the types of costs that are acceptable as cost sharing (consistent with [22 CFR 226](#)), USAID must explicitly state these; and

(4) Any other minimum qualification requirements.

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