

### § 226.3

without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

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*Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

[60 FR 3744, Jan. 19, 1995, as amended at 70 FR 50189, Aug. 26, 2005]

#### § 226.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision § 226.4.

#### § 226.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. USAID may apply more restrictive requirements to a class of recipients when approved by OMB. USAID may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the USAID Deputy Assistant Administrator for Management.

#### § 226.5 Subawards.

Unless sections of this part specifically exclude subrecipients from cov-

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erage, the provisions of this part shall be applied to subrecipients if such subrecipients are organizations which, if receiving awards directly from USAID, would fall within the definition of recipients. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” as amended.

### Subpart B—Pre-award Requirements

#### § 226.10 Purpose.

Sections 226.11 through 226.17 prescribe forms and instructions and other pre-award matters to be used in applying for USAID awards.

#### § 226.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance USAID shall decide on the appropriate award instrument (*i.e.*, grant cooperative agreement or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* USAID shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.