

of the CFR, must ensure that such agreement with the sub-recipient includes the following terms:

(i) While receiving foreign assistance under this award:

(A) If the sub-recipient is a foreign NGO or IO, the sub-recipient will not promote gender ideology outside the United States (including its territories and possessions) or provide financial support to any other foreign NGO or IO that conducts such activities.

(B) If the sub-recipient is a United States NGO:

(1) The sub-recipient will not, outside the United States (including its territories and possessions) provide sex-rejecting procedures.

(2) The sub-recipient will not, within the scope of any program, project, or activity for which foreign assistance funds are made available under this award, promote gender ideology.

Subject to sub-paragraph (7)(i)(B)(1) above, the sub-recipient is not prohibited from lawfully promoting gender ideology outside the scope of a program, project, or activity for which funds are made available under this award, so long as the sub-recipient uses funds from sources other than the U.S. Government to do so.

(3) The sub-recipient agrees that any program, project, or activity for which funds are made available under this award must be organized so that the program, project, or activity is physically and financially separate from the activities described in sub-paragraph (7)(i)(B)(2) above (“prohibited activities”), such that there is an objective integrity and independence from such activities. Mere bookkeeping separation of funds under the award from other monies is not sufficient. Whether such objective integrity and independence exist will be determined based on a review of facts and circumstances, including:

(i) The existence of separate, accurate accounting records;

(ii) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, and educational services) in which the prohibited activities occurs and the extent of such prohibited activities;

(iii) The existence of separate personnel, electronic or paper-based health care records (if applicable), and workstations; and

(iv) The extent to which signs and other forms of identification are present, and signs and material that refer to, promote, or constitute, prohibited activities, are absent.

(ii) The recipient and authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the CFR: (I) inspect the documents, trainings, and materials maintained or prepared by the sub-recipient in the usual or required course of its operations that describe the activities of the sub-recipient, including reports, brochures and service statistics; (II) observe activities conducted by the sub-recipient; (III) consult with personnel of the sub-recipient and those who receive the services of the sub-recipient; and, (IV) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable.

(iii) In the event that the recipient or an authorized representative of the U.S. Government has reasonable cause to believe that a sub-recipient may have violated any of its undertakings under this award term, the recipient will review the foreign assistance program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to the recipient such books and records and other information as may be reasonably requested to conduct the review. Authorized representatives of the U.S. Government may review the foreign assistance program of the sub-recipient under these circumstances, and the sub-recipient must provide access on a timely basis to such authorized representatives to such books and records and other information upon request, consistent with Part 200 of Title 2 of the CFR. In such an event, during the process of investigating any suspected violation, the Department of State may additionally order the recipient to suspend or withhold some or all payments of foreign assistance to the sub-recipient.

(iv) The U.S. Government shall terminate foreign assistance provided to the sub-recipient under this award if the sub-recipient violates any award terms under sub-paragraphs (7)(i)–(iii) above, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(v) In addition to other remedies available to the U.S. Government, the sub-recipient’s failure to comply with the requirements of this award provision may result in—

(A) Suspension of payments until the sub-recipient has taken appropriate remedial action; and/or

(B) Suspension or debarment.

(vi) In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient for activities prohibited under the terms of this award, up to the total amount of foreign assistance furnished to the sub-recipient under this award. Where the Department of State is not otherwise engaged in the determination to terminate a sub-recipient’s award, the recipient must notify the Department of State of any action taken for a violation of any undertaking required under sub-paragraphs (7)(i)–(iii) above.

(vii) The sub-recipient may furnish foreign assistance under this award to any foreign NGO, IO, or U.S. NGO, only if the sub-recipient’s agreement with the sub-sub-recipient contains the same terms and conditions as those provided by the recipient to the sub-recipient as described in sub-paragraphs (7)(i)–(iv) above.

(8) Where the terms and conditions of the award require the approval of sub-awards by the Department of State, the recipient must, consistent with Part 200 of Title 2 of the CFR, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing foreign assistance under this award.

(9) The recipient is liable to the U.S. Government for a refund for a violation by the sub-recipient of any requirement of this

award term only if: (i) the recipient furnishes foreign assistance under this award to a subrecipient knowing that the subrecipient is in likely violation of the applicable award terms of this award term; (ii) the sub-recipient did not abide by the award terms required by sub-paragraphs (7)(i)–(iii) above, and the recipient failed to make reasonable due diligence efforts prior to furnishing foreign assistance to the sub-recipient; or, (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by sub-paragraphs (7)(i)–(iii) above, and the recipient fails to terminate foreign assistance to the sub-recipient, or fails to require the sub-recipient to terminate foreign assistance furnished under a sub-award that violates any award terms required by sub-paragraphs (7)(i)–(iii), above, or fails to take other appropriate corrective action consistent with sub-paragraph (7)(iv) above.

(10) Recipient acknowledges that authorized representatives of the U.S. Government may make independent inquiries in the community served by the recipient or a sub-recipient under this award regarding whether it is in compliance with the award terms required by sub-paragraphs (7)(i)–(iii) above. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

**Christopher T. Landau,**

*Deputy Secretary of State, U.S. Department of State.*

[FR Doc. 2026–01516 Filed 1–23–26; 4:15 pm]

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## DEPARTMENT OF STATE

### 2 CFR Part 604

[Public Notice: 12932]

RIN 1400–AG26

### Combating Discriminatory Equity Ideology in Foreign Assistance Rules

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** To implement the foreign policy objective of the United States not to support the promotion of discriminatory equity ideology overseas directly or indirectly, the U.S. Department of State (Department) is adding a new award term for grants, cooperative agreements, and voluntary contributions entitled “Combating Discriminatory Equity Ideology in Foreign Assistance.” The award term imposes certain requirements relating to discriminatory equity ideology on foreign nongovernmental organizations (NGOs), United States NGOs, international organizations, foreign governments, and parastatals. The award term is issued consistent with the

Foreign Assistance Act of 1961 (FAA) and other foreign assistance authorities such as the FREEDOM Support Act, the Migration and Refugee Assistance Act of 1962, and the SEED Act of 1989, which authorize the Department to provide foreign assistance on such terms and conditions as the President, and by delegation, the Secretary of State, may determine.

**DATES:** The rule is effective February 26, 2026.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Global Acquisitions, Federal Assistance Division, [fedassistancepolicy@state.gov](mailto:fedassistancepolicy@state.gov), (202) 890-9795.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

To ensure that foreign aid is aligned with administration policy and promotes human flourishing, the Secretary of State has directed that foreign assistance align with State Department policies opposing gender ideology, discriminatory equity ideology, unlawful diversity, equity, and inclusion (DEI) programs, and abortion as a method of family planning overseas. Consistent with this directive, as a condition of receiving foreign assistance, recipients must agree to the award terms pursuant to the following policies: Protecting Life in Foreign Assistance (PLFA), Combating Gender Ideology in Foreign Assistance (CGIFA), and the Combating Discriminatory Equity Ideology in Foreign Assistance (CDEIFA). These policies are referred to collectively as the Promoting Human Flourishing in Foreign Assistance (PHFFA) Policy.

Implementation of the PHFFA Policy is consistent with administration policy as embodied in numerous Presidential actions, including:

- Presidential Memorandum of January 24, 2025, *The Mexico City Policy*;
- Executive Order 14182 of January 24, 2025, *Enforcing the Hyde Amendment*;
- Executive Order 14150 of January 20, 2025, *America First Policy Directive to the Secretary of State*;
- Presidential Memorandum of February 6, 2025, *Advancing United States Interests When Funding Nongovernmental Organizations*;
- Presidential Memorandum of February 4, 2025, *Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to all International Organizations*;

- Executive Order 14190 of January 29, 2025, *Ending Radical Indoctrination in K-12 Schooling*;
- Presidential Memorandum of March 18, 2025, *Removing Discrimination and Discriminatory Equity Ideology from the Foreign Service*;
- Executive Order 14151 of January 20, 2025, *Ending Radical and Wasteful DEI Programs and Preferencing*;
- Executive Order 14168 of January 20, 2025, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*;
- Executive Order 14173 of January 21, 2025, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*;

**II. Combating Discriminatory Equity Ideology in Foreign Assistance**

Under previous administrations, U.S. foreign assistance was abused to fund discriminatory diversity equity and inclusion (DEI) policies and similar ideologies that promoted corrosive identity politics rather than alleviating poverty or promoting human flourishing and prosperity. This ideology, referred to in this rule as discriminatory equity ideology, treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of generalizations.

Under the previous administration, USAID issued DEI strategic action plans,<sup>1</sup> installed Diversity, Equity, and Inclusion (DEI) advisers and DEI committees “in all of its bureaus, offices, and [overseas] missions,” and monitored compliance with “an agency-wide dashboard and DEI scorecard for all bureaus, offices, and missions”.<sup>2</sup> The prior administration’s diplomats embraced the so-called “1619 Project” and denigrated the United States claiming “white supremacy and black inferiority” were “weaved” “into our founding document and principles.”<sup>3</sup> USAID’s 2023 Updated Equity Action Plan pledged that it would “[a]nalyze

<sup>1</sup> Diversity, Equity, Inclusion, and Accessibility in USAID Programs, FY22-Q1 [https://assets.performance.gov/APG/files/2022/may/FY2022\\_May\\_USAID\\_Progress\\_Diversity\\_Equity\\_Inclusion\\_and\\_Accessibility\\_in\\_USAID\\_Programs.pdf](https://assets.performance.gov/APG/files/2022/may/FY2022_May_USAID_Progress_Diversity_Equity_Inclusion_and_Accessibility_in_USAID_Programs.pdf).

<sup>2</sup> Adva Saldinger, “USAID Steps Up ‘Languishing’ Diversity, Equity, and Inclusion Effort,” *Devex.com*, December 15, 2021, <https://www.devex.com/news/usa-id-steps-up-languishing-diversity-equity-and-inclusion-effort-102316>.

<sup>3</sup> U.S. Mission to International Organizations in Geneva, “Remarks by Ambassador Linda Thomas-Greenfield on the International Day for the Elimination of Racial Discrimination,” March 19, 2021, <https://geneva.usmission.gov/2021/03/19/remarks-by-ambassador-linda-thomas-greenfield-for-international-day-for-the-elimination-of-racial-discrimination/>.

up to 10 Performance Plan and Report (PPR) Key Issue Narratives and identify new opportunities for advancing racial and ethnic equity and support for underserved communities in programming” and “[e]stablish targets for increased budgetary attributions during the Operational Plan process against all of the following Key Issues: Racial and Ethnic Equity, Indigenous Peoples, LGBTQI+, and Disability.”<sup>4</sup>

This rule also aligns with other Presidential directives to the Department of State, and other agencies, including the memorandum of March 18, 2025, “Removing Discrimination and Discriminatory Equity Ideology from the Foreign Service.” This memorandum directs the Secretary of State to remove the “Diversity, Equity, Inclusion, and Accessibility” Core Precept from Foreign Service tenure and promotion criteria, and established the policy of the Federal Government that hiring in foreign policy positions, like hiring in all other parts of the Government, shall be based solely on merit. The memorandum also directs the Department of State and other agencies to direct all officers and employees not to “while acting in an official capacity, promote, advocate for, or otherwise inculcate support for discriminatory equity ideology” (See section 3(b)(ii)). The definition of “discriminatory equity ideology” in this rule aligns with that Presidential memorandum.

The promotion abroad of radical DEI activities and the ideology of discriminatory equity ideology that undergirds it, undermines the wellbeing and flourishing of foreign nations and promote radical ideologies. It is the purpose of this rule to end taxpayer support for radical discriminatory equity ideology, directly or indirectly, and to end all forms of unlawful DEI-related discrimination by recipients of foreign assistance, and thereby to unwind efforts of the prior administration, and of nongovernmental and international organizations, that have integrated and encouraged discrimination and discriminatory equity ideology in foreign assistance programs. This rule is consistent with similar efforts by the Department to protect taxpayers from supporting abortion under the Protecting Life in Foreign Assistance Policy (often known as the Mexico City Policy) and from supporting gender ideology under the Combating Gender Ideology in Foreign Assistance Policy. Accordingly, under

<sup>4</sup> USAID, 2023 Updated Equity Action Plan, [https://assets.performance.gov/cx/equity-action-plans/2023/EO\\_14091\\_USAID\\_EAP\\_2023.pdf](https://assets.performance.gov/cx/equity-action-plans/2023/EO_14091_USAID_EAP_2023.pdf).

this rule the Department of State will defend the rights of women and children, protect freedom of conscience and national sovereignty, and protect all individuals from unlawful DEI-related discrimination, by requiring recipients of foreign assistance to comply with certain restrictions relating to discriminatory equity ideology and unlawful DEI-related discrimination. The rule provides for a waiver of the policy or its elements in specific cases if, in the Secretary of State's judgment, such a waiver is necessary for national security or foreign policy purposes. The Department of State will issue guidance on the waiver process. Consistent with past Mexico City Policy protocol, the provision will generally be incorporated as applicable into grants and cooperative agreements when new funds are added as well as into new awards.

#### A. Foreign NGOs and International Organizations

Under this rule, any foreign NGO or international organization (IO) that receives or implements a grant or cooperative agreement for foreign assistance will be required to agree that, during the period of the award, it will not, outside the United States, promote discriminatory equity ideology, engage in unlawful DEI-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

#### B. U.S. NGOs

Under this rule, a U.S. NGO that receives or implements a foreign assistance grant or cooperative agreement will not be subject to the policy requirements for a foreign NGO or IO. However, a U.S. NGO will be required to agree that, during the period of the award, it will not, outside the United States, engage in unlawful DEI-related discrimination, that it will not, within the scope of any program, project, or activity funded by foreign assistance, promote discriminatory equity ideology or engage in such discrimination, and that it will ensure the physical and financial separation of its foreign assistance-funded programs, projects, and activities from such activities.

With respect to the promotion of discriminatory equity ideology (other than engaging in unlawful DEI-related discrimination), this rule makes clear that with respect to United States non-governmental organizations, the award terms shall be construed consistent with the First Amendment to the United States Constitution, and shall not be construed to restrict the freedoms of

speech or association of such organizations when using non-Federal funds outside the scope of a program, project or activity for which foreign assistance is made available. This is consistent with the Supreme Court's holding in *Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205 (2013). The limitations on unlawful DEI-related discriminations do not abridge speech protected under the First Amendment and so are not limited by this rule of construction.

Consistent with the Supreme Court's guidance in *AID v. Alliance* and its ruling in *Rust v. Sullivan*, 500 U.S. 173 (1991), this rule imposes restrictions on the promotion of discriminatory equity ideology within the scope of programs, projects, and activities that receive Federal funds. These program integrity restrictions ensure that there is a bright line of separation of U.S. foreign assistance programs from discriminatory equity ideology. In *Rust*, the Supreme Court upheld similar regulations in the Title X family planning program which prohibited Title X projects from engaging in counseling concerning, referrals for, and activities advocating abortion as a method of family planning, and required such projects to maintain an objective integrity and independence from the prohibited abortion activities by the use of separate facilities, personnel, and accounting records. Relevant here, in *Rust*, the Court held:

The regulations do not violate the First Amendment free speech rights of private Title X fund recipients, their staffs, or their patients by impermissibly imposing viewpoint-discriminatory conditions on Government subsidies. There is no question but that § 1008's prohibition is constitutional, since the Government may make a value judgment favoring childbirth over abortion, and implement that judgment by the allocation of public funds. *Maher v. Roe*, 432 U. S. 464, 432 U. S. 474. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of another. Similarly, implementing the statutory prohibition by forbidding counseling, referral, and the provision of information regarding abortion as a method of family planning, the regulations simply ensure that appropriated funds are not used for activities, including speech, that are outside the federal program's scope. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U. S. 221, distinguished.

Imposition of physical and financial separation requirements from the provision and promotion of discriminatory equity ideology in foreign assistance programs is constitutionally permissible, just as similar requirements with respect to abortion were held to be constitutional

under the Title X family planning program. In addition to the above, while U.S. NGOs must flow down the award terms under this rule to subrecipients, they are not subject to an additional requirement not to provide financial support using non-Federal funds to other organizations that promote discriminatory equity ideology outside the United States.

#### C. Foreign Governments and Parastatals

A foreign government or parastatal that receives or implements a grant or cooperative agreement for foreign assistance will not be subject to the same award terms as a foreign or U.S. NGO. The Department has elected this approach based on considerations relating to foreign policy. However, a foreign government or parastatal may be required to agree that, during the period of the award, it will not use foreign assistance funds under this award to promote discriminatory equity ideology or to engage in unlawful DEI-related discrimination. Pursuant to a Department assessment that this award term should apply, in whole or in part, to an award to a foreign government or parastatal, that foreign government or parastatal will be required to place any foreign assistance funds under the award in a segregated account to ensure that such funds may not be used to support such activity to the extent the foreign government conducts or supports such activity.

#### D. Flow Down of Policy Requirements to Subrecipients

Foreign and U.S. NGOs, IOs, foreign governments, and parastatals will be required to flow down the award terms under this rule, as applicable, to subrecipients of foreign assistance.

#### E. Scope of Foreign Assistance

The Department has determined that applying this rule to non-military foreign assistance broadly is necessary to ensure that foreign assistance programs do not support foreign NGOs and IOs that promote discriminatory equity ideology, and U.S. NGOs that engage in unlawful DEI-related discrimination, and to ensure the integrity of programs such as humanitarian assistance, gender-related programs, and more, do not promote discriminatory equity ideology. It is also necessary to unwind efforts by prior administrations, as described earlier in this rule, to integrate discriminatory equity ideology throughout foreign assistance programs. This rule will also allow for more foreign assistance funds to support organizations that support American values in their foreign

assistance programs and help the Department to establish new partnerships.

Under this rule, “foreign assistance” subject to this policy is defined as federal funding administered by the Department under title III of, or under the “International Narcotics Control and Law Enforcement,” “Nonproliferation, Anti-Terrorism, Demining and Related Programs,” “Peacekeeping Operations,” and “International Organizations and Programs” headings of, the annual Department of State, Foreign Operations, and Related Programs Appropriations Act.

Accordingly, this rule covers non-military foreign assistance including, but not limited to: Global Health Programs, humanitarian assistance, economic and development assistance, stabilization assistance, civil society and democracy programming, Migration and Refugee Assistance, and voluntary contributions to international organizations, funded from foreign assistance.

This rule does not cover military assistance and other assistance that falls outside the definition above.

For foreign assistance awards, the CDEIFA award term will be included in (i) all new grants and cooperative agreements that provide foreign assistance; and (ii) all existing grants and cooperative agreements that provide foreign assistance when such agreements are amended to add new funding.

State Department is working with other agencies that administer foreign assistance to implement the CDEIFA award term in their foreign assistance grants and agreements, to the maximum extent allowable by federal law, consistent with the statutes and regulations on which they are based and that such agencies administer, as well as applicable grant-specific regulations.

For contracts, the Administration is developing a corresponding clause for all U.S. government departments and agencies to include in certain types of contracts for foreign assistance. Until the rule-making process is complete, no clause will be included in foreign assistance contracts. However, this rule covers grants made under contracts at this time.

#### F. Definitions

For purposes of this rule, the following definitions apply:

*Discriminatory equity ideology* is an ideology that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability

in favor of generalizations, including that:

(I) Members of one race, color, religion, sex, or national origin are morally or inherently superior to members of another race, color, religion, sex, or national origin;

(II) An individual, by virtue of the individual’s race, color, religion, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

(III) An individual’s moral character or status as privileged, oppressing, or oppressed is primarily determined by the individual’s race, color, religion, sex, or national origin;

(IV) Members of one race, color, religion, sex, or national origin cannot and should not attempt to treat others without respect to their race, color, religion, sex, or national origin;

(V) An individual, by virtue of the individual’s race, color, religion, sex, or national origin, bears responsibility for, should feel guilt, anguish, or other forms of psychological distress because of, should be discriminated against, blamed, or stereotyped for, or should receive adverse treatment because of actions committed in the past by other members of the same race, color, religion, sex, or national origin, in which the individual played no part;

(VI) An individual, by virtue of the individual’s race, color, religion, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion;

(VII) Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist or were created by members of a particular race, color, religion, sex, or national origin to oppress members of another race, color, religion, sex, or national origin; or

(VIII) The United States is fundamentally racist, sexist, or otherwise discriminatory.

To “promote discriminatory equity ideology” includes using or teaching education materials (including books, curricula, and media) that advance this ideology.

Action by an individual who is acting in his or her personal capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization’s premises, and provided that the organization neither endorses, nor provides financial support for, the action and takes reasonable steps to ensure the individual does not improperly represent that he or she is acting on behalf of the organization.

*Unlawful diversity, equity, and inclusion-related discrimination* (or “Unlawful DEI-related discrimination”) means discrimination on the basis of race, color, religion, or national origin if such discrimination violates U.S. federal antidiscrimination law or would violate U.S. federal antidiscrimination law if it occurred inside the United States, including the use of those characteristics as a selection criterion or preference for, or basis for exclusion from, employment, contracting, program participation, resource allocation, or similar activities, opportunities, or benefits. Such term includes all conduct that discriminates on the basis of race, color, religion, or national origin that violates U.S. federal antidiscrimination law or would violate U.S. federal antidiscrimination laws if it occurred inside the United States, including any “unlawful practices” under the Attorney General’s Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025) with respect to those characteristics. Such term does not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities. Such term shall also not apply to decisions by any religious corporation, association, or society regarding the employment of individuals who perform religious functions or other key roles for such entities. See *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020); *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).

*Foreign assistance* is federal funding appropriated under title III of, or under the “International Narcotics Control and Law Enforcement,” “Nonproliferation, Anti-Terrorism, Demining and Related Programs,” “Peacekeeping Operations,” and “International Organizations and Programs” headings of, the annual Department of State, Foreign Operations, and Related Programs Appropriations Act.

*To furnish foreign assistance* means transferring foreign assistance funds provided under this award or goods financed with such funds to another entity. This does not include providing technical assistance or training (including costs directly related to such assistance or training for individuals), unless the entity receives a sub-award of foreign assistance funds under this award. Additionally, furnishing foreign assistance does not include purchasing goods or services from the entity.

*To control an organization* means to possess the power to direct, or cause the direction of, its management, personnel, and policies.

*A foreign non-governmental organization* is any non-governmental organization or entity, whether non-profit or profit-making (including any commercial firm and educational institution), not organized or existing under the laws of the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

*A United States non-governmental organization* is any non-governmental organization or entity, whether non-profit or profit-making (including any commercial firm and educational institution), organized or existing under the laws of the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

*An international organization* is—

(A) Any organization designated as being entitled to enjoy the privileges, exemptions, and immunities under the International Organizations Immunities Act;

(B) Any organization treated as a public international organization pursuant to the regulations or policies of the Department of State;

(C) Any organization established by international agreement and whose governing body is composed principally of representatives of national governments; or

(D) Any other multilateral entity in which sovereign nations participate.

*To provide financial support* means to provide funds from any source and for any purpose to a foreign NGO or IO through an award, sub-award, contract, sub-contract, grant under contract, or other written agreement or donation of funds.

*A foreign government* is any department, agency, independent establishment, or other entity of the government of a foreign country.

*A parastatal* is a foreign-government-owned organization operated as a commercial company or other organization, including non-profits, or enterprises in which foreign governments or foreign government agencies have a controlling interest.

#### G. Unlawful DEI-Related Discrimination

For purposes of this rule, unlawful DEI-related discrimination means discrimination on the basis of race, color, religion, or national origin if such discrimination violates U.S. federal antidiscrimination law or would violate

U.S. federal antidiscrimination law if it occurred inside the United States, including the use of those characteristics as a selection criterion or preference for, or basis for exclusion from, employment, contracting, program participation, resource allocation, training, or similar activities, opportunities, or benefits. This includes all conduct that discriminates on the basis of race, color, religion, or national origin that violates U.S. federal antidiscrimination law or would violate U.S. federal antidiscrimination laws if it occurred inside the United States, including any “unlawful practices” under the Attorney General’s Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025) with respect to those characteristics. This rule does not address discrimination on the basis of disability or other protected classes, nor does it address the application of this guidance on grounds other than race, color, religion, or national origin.

The Attorney General’s guidance provides examples of unlawful practices such as race-based training sessions, race-based segregation in facilities or resources, implicit segregation through program eligibility, race-based “diverse slate” policies in hiring, race-based program participation (including when framed as addressing underrepresentation), DEI training programs that promote discrimination based on protected characteristics, such as by stereotyping, excluding or disadvantaging individuals based on their race, color, religion, or national origin, or creating a hostile environment.

Recipients of foreign assistance are urged to review all programs, policies and partnerships to ensure compliance with this rule and discontinue any practices that unlawfully discriminate. The Department also encourages recipients of foreign assistance to review and implement the best practices outlined in the Attorney General’s guidance.

#### H. Legal Authority

This rule amends 2 CFR chapter VI to add an award term at part 604, entitled “Combating Discriminatory Equity Ideology in Foreign Assistance.” The term, applicable to all solicitations, Federal assistance awards, and subawards, including grants under contracts, awarded with Department of State foreign assistance funds, including funds transferred to the United States Department of State from the U.S. Agency for International Development, provides certain discriminatory equity ideology-related requirements intended

to prohibit any direct or indirect support of discriminatory equity ideology and unlawful DEI-related discrimination.

Under the statutory regime governing foreign assistance, and consistent with his responsibilities regarding the conduct of U.S. foreign affairs, the President has broad discretion to set the terms and conditions on which the United States provides such assistance. Many of the authorities provided under the Foreign Assistance Act of 1961, and similar statutes, explicitly allow for the provision of assistance “on such terms and conditions as [the President] may determine.” *See, e.g.*, section 104(c)(1) of the FAA (22 U.S.C. 2151b(c)(1)) (health assistance); section 301(a) of the FAA (22 U.S.C. 2221(a)) (voluntary contributions to international organizations); section 481(a)(4) of the FAA (22 U.S.C. 2291(a)(4)) (counternarcotics and anti-crime assistance); section 531 of the FAA (22 U.S.C. 2346) (assistance to promote economic or political stability); section 541(a) of the FAA (22 U.S.C. 2347) (International Military Education and Training assistance); section 551 of the FAA (22 U.S.C. 2348) (Peacekeeping Operations); section 571 of the FAA (22 U.S.C. 2349aa) (anti-terrorism assistance); *see also* section 2(c)(1) of the MRAA; section 201 of the SEED Act of 1989 (amending the FAA by inserting, *inter alia*, section 498b(i)).

Section 621(a) of the FAA provides that “[t]he President may exercise any functions conferred upon him by this Act through such agency or officer of the United States Government as he shall direct. The head of any such agency or such officer may from time to time promulgate such rules and regulations as may be necessary to carry out such functions. . . .” 22 U.S.C. 2381(a). The Secretary of State exercises authorities under the FAA as delegated by the President in Executive Order 12163, dated September 29, 1979, as amended. That includes the President’s authority to “issue and enforce regulations determining the eligibility of any person to receive funds made available under” the FAA. 22 U.S.C. 2381(b).

This rule falls within the Department’s authority, delegated to the Secretary of State by the President, to set conditions on the provision of foreign assistance, including on the implementers of such assistance. Courts have repeatedly recognized that the President has broad discretion in the conduct of foreign affairs to allocate foreign assistance funding for particular programs and to set the conditions on U.S. funding to implementers of those

programs. *See, e.g., DKT Memorial Fund v. USAID*, 887 F.2d 275, 282 (D.C. Cir. 1989); *Planned Parenthood Federation of America v. USAID*, 915 F.2d 59 (2d Cir. 1990); *Center for Reproductive Law and Policy v. Bush*, 304 F.3d 183 (2d Cir. 2002). These courts recognized the President's broad discretion to allocate assistance funding for particular programs and to set the conditions on U.S. funding to non-governmental implementers of those programs. *See, e.g., Planned Parenthood v. USAID*, 838 F.2d 649, 654 (2d Cir. 1988) (in carrying out the policies under the Foreign Assistance Act, "AID has 'broad discretionary power' to decide which, among numerous competing projects, will be given family planning funds"); *DKT*, 887 F.2d at 282 ("President acted under a congressional grant of discretion as broadly worded as any we are likely to see. . . .").

Moreover, the Secretary has the authority to promulgate such rules and regulations as may be necessary to carry out his functions and the functions of the Department of State. *See* 22 U.S.C. 2651a(a)(4). This rule provides an award requirement for federal assistance award recipients to refrain from discriminatory equity ideology-related activities to varying degrees. Under its grantmaking authority, the Department awards grants in the execution of foreign assistance programs. Prudent and responsible exercise of the Department's foreign assistance and grantmaking authority requires that award terms ensure that foreign assistance does not support, directly or indirectly, the provision or promotion of discriminatory equity ideology. In addition to the Department's authority to promulgate regulations under the FAA, described above, 2 CFR 200.211(c), (d), and (e) also expressly authorize the agency to incorporate in an award general terms and conditions; Federal awarding agency, program, or Federal award specific terms and conditions; and Federal awarding agency requirements.

This rule is issued pursuant to the Secretary's authorities described above.

The Department has additionally considered the potential reliance interests of funding recipients and others on this final rule. The Department understands that, as a result of this rule, some organizations may choose to no longer receive or seek foreign assistance funds rather than comply with the award term. We understand that compliance may require organizations to cease activities that they may have long carried out, but are prohibited under the award term established under this rule. In the case of U.S. NGOs, we anticipate that some

organizations will incur transition costs where certain other programs that shared facilities with foreign assistance programs must now establish separate physical facilities.

The Department believes that many organizations that are current recipients of foreign assistance will come into compliance as they obtain future grants or when funds are added to existing grants. However, the Department understands that certain organizations may decide to no longer accept foreign assistance in the future because of these award terms, which could in turn result in temporary disruptions in service delivery or impacts on program beneficiaries. In such cases, the Department will work to find new partners willing to agree to the award term, while minimizing any disruption of services. Moreover, the Department expects the quality and impact of foreign assistance programs to improve as programs are focused and prioritized, without being diverted for activities in violation of this rule.

The interests of organizations in maintaining continued taxpayer funding, while continuing activities that are inconsistent with this rule, do not outweigh the Department's foreign policy concerns and objectives outlined in this rule to ensure that foreign assistance funds do not directly or indirectly support discriminatory equity ideology. Compliance with this rule is additionally necessary to remove confusion caused when U.S.-funded organizations act in a manner inconsistent with this rule, which can create confusion regarding the foreign policy priorities and objectives of the United States.

Finally, in the event that any portion of this final rule is declared invalid, the Department intends that the various aspects be severable; the Department would intend the remaining features of the policy to stand.

### III. Regulatory Analyses

#### A. Administrative Procedure Act

Pursuant to the Administrative Procedure Act (APA), this is final rule is published without prior notice and comment or a delayed effective date. Because this rule involves a matter relating to grants, it is not subject to 5 U.S.C. 553. *See* 5 U.S.C. 553(a)(2). In addition, this rule is exempt because it involves the foreign affairs functions of the United States. *See* 5 U.S.C. 553(a)(1).

#### B. Executive Orders 12866 (Regulatory Planning and Review), and 13563 (Improving Regulation and Regulatory Review)

The Office of Information and Regulatory Affairs has determined that this rulemaking is an economically significant regulatory action under section 3(f) of Executive Order 12866, (Sep. 30, 1993). Accordingly, this rule has been submitted to the Office of Management and Budget ("OMB") for review.

This regulation has been drafted and reviewed in accordance with Executive Order 12866 section 1(b), *id.* at 51735, and in accordance with Executive Order 13563 section 1(b) (Jan. 18, 2011), which supplements and reaffirms the principles of Executive Order 12866. These Executive Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 also recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify. *Id.*

As explained in the preamble, the award terms under this rule are necessary to advance the United States' foreign policy objective not to support discriminatory equity ideology.

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of the intended regulation. E.O. 13563 allows that in making this assessment, an agency "may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts."

Including this award provision in grants and cooperative agreements funded by Department of State foreign assistance provides an explicit requirement that the Department's recipients and grantees not violate applicable undertakings relating to the provision or promotion of discriminatory equity ideology. The benefits of the rule include protecting American taxpayers from supporting discriminatory equity ideology, directly or indirectly, advancing the foreign policy interests of the United States not to support discriminatory practices or anti-American ideologies, and to ensure foreign assistance programs and foreign partners are not undermining the laws and values of foreign nations or pressuring such nations to support discriminatory equity ideology. In addition, the restrictions on unlawful

DEI-related discrimination ensure broader access to foreign assistance programs by program recipients and secure merit-based opportunity for employees of recipients of foreign assistance.

The Department recognizes there are costs associated with this rule. Potential one-time and recurring costs the Department identifies for recipients and grantees are for familiarization with the rule, development and delivery of organizational training and implementation guidance, routine compliance monitoring, and recordkeeping and reporting requirements.

The Department estimates that 2,500 recipients and grantees (including foreign NGOs, U.S. NGOs, international organizations, and foreign governments and parastatals) will be impacted by this rule. This estimate is derived from an analysis of the Department's current portfolio of funding recipients implementing activities with foreign assistance funds.

Based in part on the Department's previous experience, the agency estimates that recipients and grantees will first require 50 hours, on average, to familiarize themselves with the recordkeeping requirements within this final rule, and revise internal policies and financial accounting systems to comply with said recordkeeping requirements. To quantify the total one-time familiarization costs, The Department used June 2025 data from the Bureau of Labor Statistics (BLS) National Compensation Survey,<sup>5</sup> reporting a mean fringe benefit factor of 1.46 for civilian workers in general. The Department assumes that impacted entities will employ an attorney to analyze the rule. Multiplying the BLS mean hourly wage for Lawyers, Standard Occupation Classification 23–1011 of \$87.86 by the mean fringe benefit factor of 1.46 yields an estimated total compensation (wages and benefits) for Lawyers of \$128.28 per hour  $(\$87.86 \text{ per hour} \times 1.46)$ .

Thus, the agency calculates a one-time cost for familiarization of \$16,035,000 [(2,500 entities) times (50 hours per entity) times (\$128.28/hour)].

For the development and delivery of organization-specific training, the Department estimates a cost of \$37,984,700. The Department estimates that recipients subject to the rule will spend twenty one (21) hours annually to train their workforces: eight (8) hours developing training materials and twelve (12) hours each month to train newly hired staff, and one hour to train

existing staff. The Department estimates that a lawyer will develop and conduct this training at a cost of \$128.28 per hour, and that all recipient staff will attend a one-hour training. The Department estimates an average workforce size of 250 staff with an average hourly salary of \$50. For routine compliance monitoring costs, the Department estimates \$76,968,000 annually. The Department estimates a minimum of 240 annual hours (20 hours monthly) to monitor prime and sub-recipient activities. Such monitoring activities may include development of monitoring tools such as checklists, discussion guides, and reference materials, conducting desk review of documents, reports, work plans, and budgets, and conducting site visits to inspect implementation of activities for compliance with policy requirements. The Department estimates that these activities will be conducted by lawyers and senior program managers with an average hourly salary of \$128.28.

Finally, the Department recognizes that this final rule is likely to impose costs on some U.S. NGOs whose programs currently share facilities with foreign assistance programs, and now must establish separate physical facilities. The Department also understands that certain organizations may decide to no longer accept-foreign assistance in the future because of these award terms, which could in turn result in temporary disruptions in service delivery, imposing costs on program beneficiaries. However, the Department is not able to quantitatively assess these costs.

In summary, the Department estimates this rule will impose one-time familiarization costs of \$16,035,000, and annual costs related to training and compliance monitoring of \$114,052,700.

#### C. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. It requires a regulatory flexibility analysis if a rule is subject to the notice-and-comment provisions of the APA and would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule is exempt from the notice and comment requirements of the APA, as a matter related to grants and foreign affairs functions, and thus the Department does not provide a regulatory flexibility analysis. See 5 U.S.C. 553(a)(2).

#### D. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of \$100 million or more in State, local, or Indian Tribal governments. Since this final rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

#### E. Executive Order 14192 (*Unleashing Prosperity Through Deregulation*)

Executive Order 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 3(c) of the Order requires that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” *Id.* Executive Order 14192 exempts from these requirements “regulations issued with respect to a foreign affairs-related function of the United States.” This rule is issued with respect to foreign affairs-related functions and is thus exempt from Executive Order 14192 requirements.

#### F. Executive Order 14294 (*Fighting Overcriminalization in Federal Regulations*)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to “explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to” each element of those offenses. This rule does not impose a criminal regulatory penalty and is thus exempt from Executive Order 14294 requirements.

#### G. Executive Orders 12372 and 13132—*Federalism*

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing E.O. 12372 regarding intergovernmental

<sup>5</sup> <https://www.bls.gov/news.release/pdf/ecec.pdf>.

consultation on Federal programs and activities do not apply to this regulation.

#### H. Executive Order 13175— Consultation With Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, the requirements of E.O. 13175 do not apply to this rule.

#### I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) defines “collection of information” to mean “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.” 44 U.S.C. 3502(3)(A). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it and the agency displays a currently valid OMB control number. 44 U.S.C. 3507. Also, notwithstanding any other provision of law, no individual or organization shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. 44 U.S.C. 3512. The Department will not enforce any information collection requirements described in this rule until OMB’s approval and will publish separate 60- and 30-day notices in the **Federal Register** soliciting public comment on the burden estimates provided below.

##### *Title of Information Collection:*

Foreign Assistance Requirements.

*OMB Control Number:* 1405–XXXX.

*Type of Request:* New collection.

*Originating Office:* Department of State, Bureau of Global Acquisitions.

*Form Number:* No form.

*Respondents:* Offerors and awardees of Department of State foreign assistance.

*Estimated Number of Respondents:* 2,500.

*Estimated Number of Responses:* 2,500.

*Average Time per Response:* 261 hours.

*Total Estimated Burden Hours:* 652,500 hours.

*Estimated Burden Hour Costs:* \$114,052,700.

*Frequency:* On occasion.

*Obligation to Respond:* Mandatory.

#### J. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this final rule meets the criteria in the

Congressional Review Act (CRA) at 5 U.S.C. 804(2) and will comply with the applicable requirements at 5 U.S.C. 801. However, the Department has also determined that there is good cause to exempt this rule from the 60-day delay of effect at 5 U.S.C. 801(a)(3)(A). Specifically, the requirement for a delayed effective date does not apply because notice and public procedure are not required for this rule by the APA and thus are unnecessary for the purposes of the CRA under 5 U.S.C. 808(2). As noted above, this rule involves a matter relating to grants. See 5 U.S.C. 553(a)(2). In addition, this rule involves the foreign affairs functions of the United States. See 5 U.S.C. 553(a)(1).

#### List of Subjects in 2 CFR Part 604

Administrative practice and procedure, Grant programs.

■ For the reasons set forth above, the Department of State adds part 604 to title 2 of the Code of Federal Regulations to read as follows:

#### **PART 604—COMBATING DISCRIMINATORY EQUITY IDEOLOGY IN FOREIGN ASSISTANCE**

Sec.

604.10 Applicability.

604.20 Award term.

Appendix A to Part 604—Requirements and Eligibility Criteria for Recipients of Foreign Assistance

**Authority:** 5 U.S.C. 301; 22 U.S.C. 2651a, 22 U.S.C. 2151, 22 U.S.C. 2451, 22 U.S.C. 1461; 2 CFR part 200.

#### **PART 604—COMBATING DISCRIMINATORY EQUITY IDEOLOGY IN FOREIGN ASSISTANCE**

##### **§ 604.10 Applicability.**

This part establishes an award term for recipients and subrecipients of Federal awards subsidized in whole or in part by foreign assistance funds administered by the Department of State. The award term under this part must generally be included in all foreign assistance solicitations and all resulting awards, including all grants, cooperative agreements, and voluntary contributions, whenever implementation of the activity involves foreign assistance, to, or implemented by, foreign nongovernmental organizations, international organizations, and United States nongovernmental organizations. The award term under this part may but need not be included in whole or in part, as applicable, in agreements with foreign governments and parastatals (e.g., government-to-government agreements or other agreements with host governments), and agreements with

bilateral governmental donors if the Department of State assesses such term is appropriate for that agreement.

##### **§ 604.20 Award term.**

The award term in appendix A to this part will be incorporated, as applicable, in awards for foreign assistance administered by the Department of State.

(a) The following definitions apply for purposes of the award term in appendix A to this part:

(1)(i) *Discriminatory equity ideology* is an ideology that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of generalizations, including that:

(A) Members of one race, color, religion, sex, or national origin are morally or inherently superior to members of another race, color, religion, sex, or national origin;

(B) An individual, by virtue of the individual’s race, color, religion, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

(C) An individual’s moral character or status as privileged, oppressing, or oppressed is primarily determined by the individual’s race, color, religion, sex, or national origin;

(D) Members of one race, color, religion, sex, or national origin cannot and should not attempt to treat others without respect to their race, color, religion, sex, or national origin;

(E) An individual, by virtue of the individual’s race, color, religion, sex, or national origin, bears responsibility for, should feel guilt, anguish, or other forms of psychological distress because of, should be discriminated against, blamed, or stereotyped for, or should receive adverse treatment because of actions committed in the past by other members of the same race, color, religion, sex, or national origin, in which the individual played no part;

(F) An individual, by virtue of the individual’s race, color, religion, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion;

(G) Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist or were created by members of a particular race, color, religion, sex, or national origin to oppress members of another race, color, religion, sex, or national origin; or

(H) The United States is fundamentally racist, sexist, or otherwise discriminatory.

(ii) To *promote discriminatory equity ideology* includes using or teaching education materials (including books, curricula, and media) that advance this ideology.

(iii) Action by an individual who is acting in his or her personal capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and provided that the organization neither endorses, nor provides financial support for, the action and takes reasonable steps to ensure the individual does not improperly represent that he or she is acting on behalf of the organization.

(2) *Unlawful diversity, equity, and inclusion-related discrimination* (or *Unlawful DEI-related discrimination*) means discrimination on the basis of race, color, religion, or national origin if such discrimination violates U.S. Federal antidiscrimination law or would violate U.S. Federal antidiscrimination law if it occurred inside the United States, including the use of those characteristics as a selection criterion or preference for, or basis for exclusion from, employment, contracting, program participation, resource allocation, or similar activities, opportunities, or benefits. Such term includes all conduct that discriminates on the basis of race, color, religion, or national origin that violates U.S. Federal antidiscrimination law or would violate U.S. Federal antidiscrimination laws if it occurred inside the United States. For illustrative examples of unlawful DEI-related discrimination, see the Attorney General's Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025). Such term does not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities. Such term shall also not apply to decisions by any religious corporation, association, or society regarding the employment of individuals who perform religious functions or other key roles for such entities. See *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020); *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).

(3) *Foreign assistance* is Federal funding administered by the Department of State appropriated under title III of, or under the "International Narcotics Control and Law Enforcement," "Nonproliferation, Anti-

Terrorism, Demining and Related Programs," "Peacekeeping Operations," and "International Organizations and Programs" headings of, the annual Department of State, Foreign Operations, and Related Programs Appropriations Act.

(4) To *furnish foreign assistance* means transferring foreign assistance funds provided under the award or goods financed with such funds to another entity. This does not include providing technical assistance or training (including costs directly related to such assistance or training for individuals), unless the entity receives a sub-award of foreign assistance funds under the award. Additionally, furnishing foreign assistance does not include purchasing goods or services from the entity.

(5) To *control an organization* means to possess the power to direct, or cause the direction of, its management, personnel, and policies.

(6) A *foreign non-governmental organization (NGO)* is any non-governmental organization or entity, whether non-profit or profit-making (including any commercial firm and educational institution), not organized or existing under the laws of the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

(7) A *United States non-governmental organization (NGO)* is any non-governmental organization or entity, whether non-profit or profit-making (including any commercial firm and educational institution), organized or existing under the laws of the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

(8) An *international organization (IO)* is—

(i) Any organization designated as being entitled to enjoy the privileges, exemptions, and immunities under the International Organizations Immunities Act;

(ii) Any organization treated as a public international organization pursuant to the regulations or policies of the Department of State;

(iii) Any organization established by international agreement and whose governing body is composed principally of representatives of national governments; or

(iv) Any other multilateral entity in which sovereign nations participate.

(9) To *provide financial support* means to provide funds from any source

and for any purpose to a foreign NGO or IO through an award, sub-award, contract, sub-contract, grant under contract, or other written agreement or donation of funds.

(10) A *foreign government* is any department, agency, independent establishment, or other entity of the government of a foreign country.

(11) A *parastatal* is a foreign-government-owned organization operated as a commercial company or other organization, including non-profits, or enterprises in which foreign governments or foreign government agencies have a controlling interest.

(b) See appendix A to this part for the requirements and eligibility criteria for recipients of foreign assistance.

(c) With respect to United States non-governmental organizations, the award term shall be construed consistent with the First Amendment to the United States Constitution and shall not be construed to restrict the freedoms of speech or association of such organizations when using non-Federal funds outside the scope of a program, project or activity for which foreign assistance is made available.

(d) The Secretary of State or Under Secretary of State for Foreign Assistance, Humanitarian Affairs, and Religious Freedom may waive the application of this part or any of its elements if a waiver is deemed necessary for national security or foreign policy purposes.

(e) In the event of a conflict between a term of the award term and local law, an exemption may be sought from such term from the Department of State to avoid a violation of the award term.

(f) In determining whether an entity is eligible to be a recipient or sub-recipient of foreign assistance under the award, the action of separate entities shall not be imputed to the recipient or sub-recipient, unless, in the judgment of the Department of State, a separate entity is being used purposefully to avoid the provisions of this part. Separate entities are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Entities that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the approval of its Agreement Officer to treat as separate the activities of two or more entities, which would not be considered separate under the preceding sentence. The recipient must provide a written justification to the Department of State that the activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.

(g) If anything in the award term, or the application of this part to any person or circumstance, is held to be unconstitutional, the remainder of this part and the application of such to any person or circumstance shall not be affected thereby.

(h) The award term in appendix A to this part shall be inserted *verbatim* in sub-awards in accordance with the terms of paragraphs (a) and (b) of this section.

## Appendix A to Part 604—Requirements and Eligibility Criteria for Recipients of Foreign Assistance

### I. Grants and Cooperative Agreements to Foreign Non-Governmental Organizations

(1) The recipient agrees that it will not, during the term of this award, outside the United States (including its territories and possessions), promote discriminatory equity ideology, engage in unlawful DEI-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

(2) The recipient agrees that authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the Code of Federal Regulations (CFR): (i) inspect the documents, trainings, and materials maintained or prepared by the recipient in the usual or required course of its operations that describe the priorities and activities of the recipient, including reports, brochures and service statistics; (ii) observe the activities conducted by the recipient, (iii) consult with personnel of the recipient and those who receive the services of the recipient; and, (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

(3) In the event authorized representatives of the U.S. Government have reasonable cause to believe that the recipient may have violated any undertaking required by these Requirements and Eligibility Criteria, the recipient must make available to the Department of State such books and records and other information as the Department of State may reasonably request to determine whether a violation of that undertaking has occurred, consistent with Part 200 of Title 2 of the CFR.

(4) The U.S. Government shall terminate foreign assistance furnished to the recipient under this award if the recipient violates any undertaking required by this award term, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(5) In addition to other remedies available to the U.S. Government, the recipient's failure to comply with the requirements of this award provision may result in—

(i) Suspension of payments until the sub-recipient has taken appropriate remedial action; and/or

(ii) Suspension or debarment.

(6) In the event of termination, the recipient must refund to the Department of State any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to engage in any activity that violates this award term while receiving funding under this award. The amount to be refunded to the Department of State under this subparagraph (6) may not exceed the total amount of foreign assistance furnished under this award.

(7) The recipient may not furnish foreign assistance under this award to any other foreign NGO, IO, or United States NGO (the sub-recipient), unless the recipient's agreement with the sub-recipient contains the same terms and conditions as described in sub-paragraph (8) below.

(8) Prior to entering into an agreement to furnish foreign assistance to any other foreign NGO, IO, or United States NGO, the recipient, must ensure that such agreement with the sub-recipient includes the following terms:

(i) While receiving foreign assistance under this award:

(A) If the sub-recipient is a foreign NGO or IO, the sub-recipient will not promote discriminatory equity ideology, engage in unlawful DEI-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

(B) If the sub-recipient is a United States NGO:

(1) The sub-recipient will not, outside the United States (including its territories and possessions), engage in unlawful DEI-related discrimination.

(2) The sub-recipient will not, within the scope of any program, project, or activity for which foreign assistance funds are made available under this award, promote discriminatory equity ideology or engage in unlawful DEI-related discrimination.

Subject to sub-paragraph (8)(i)(B)(1) above, the sub-recipient is not prohibited from lawfully promoting discriminatory equity ideology, outside the scope of a program, project, or activity for which funds are made available under this award, so long as the sub-recipient uses funds from sources other than the U.S. Government to do so.

(3) The sub-recipient agrees that any program, project, or activity for which funds are made available under this award must be organized so that the program, project, or activity is physically and financially separate from the activities described in sub-paragraph (8)(i)(B)(2) above (“prohibited activities”), such that there is an objective integrity and independence from such activities. Mere bookkeeping separation of funds under the award from other monies is not sufficient. Whether such objective integrity and independence exist will be determined based on a review of facts and circumstances, including:

(i) The existence of separate, accurate accounting records;

(ii) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, and educational services) in which the prohibited activities occurs and the extent of such prohibited activities;

(iii) The existence of separate personnel, electronic or paper-based health care records (if applicable), and workstations; and

(iv) The extent to which signs and other forms of identification are present, and signs and material that refer to, promote, or constitute, prohibited activities, are absent.

(ii) The recipient and authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the CFR:

(A) inspect the documents, trainings, and materials maintained or prepared by the sub-recipient in the usual or required course of its operations that describe the activities of the sub-recipient, including reports, brochures and service statistics;

(B) observe activities conducted by the sub-recipient;

(C) consult with personnel of the sub-recipient and those who receive the services of the sub-recipient; and

(D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable.

(iii) In the event that the recipient or an authorized representative of the U.S. Government has reasonable cause to believe that a sub-recipient may have violated any of its undertakings under this award term, the recipient will review the foreign assistance program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to the recipient such books and records and other information as may be reasonably requested to conduct the review. Authorized representatives of the U.S. Government may review the foreign assistance program of the sub-recipient under these circumstances, and the sub-recipient must provide access on a timely basis to such authorized representatives to such books and records and other information upon request, consistent with Part 200 of Title 2 of the CFR.

(iv) The U.S. Government shall terminate foreign assistance provided to the sub-recipient under this award if the sub-recipient violates any award terms under sub-paragraphs (8)(i)–(iii) above, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(v) In addition to other remedies available to the U.S. Government, the sub-recipient's failure to comply with the requirements of this award provision may result in—

(A) Suspension of payments until the sub-recipient has taken appropriate remedial action; and/or

(B) Suspension or debarment.

(vi) In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient for activities prohibited under the terms of this award, up to the total amount of foreign assistance furnished to the sub-recipient under this award. Where the Department of State is not otherwise engaged in the determination to terminate a sub-recipient's award, the recipient must notify the Department of State of any action taken for a violation of any undertaking required under sub-paragraphs (8)(i)–(iii) above.

(vii) The sub-recipient may furnish foreign assistance under this award to any foreign NGO, IO, or U.S. NGO, only if the sub-recipient's agreement with the sub-sub-recipient contains the same terms and conditions as those provided by the recipient to the sub-recipient as described in subparagraphs (8)(i)–(iv) above.

(9) Where the terms and conditions of the award require the approval of sub-awards by the Department of State, the recipient must, consistent with Part 200 of Title 2 of the CFR, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing foreign assistance under this award.

(10) The recipient is liable to the U.S. Government for a refund for a violation by the sub-recipient of any requirement of this award term only if: (i) the recipient furnishes foreign assistance under this award to a subrecipient knowing that the subrecipient is in likely violation of the applicable award terms of this award term; (ii) the sub-recipient did not abide by the award terms required by sub-paragraphs (8)(i)–(iii) above, and the recipient failed to make reasonable due diligence efforts prior to furnishing foreign assistance to the sub-recipient; or, (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by sub-paragraphs (8)(i)–(iii) above, and the recipient fails to terminate foreign assistance to the sub-recipient, or fails to require the sub-recipient to terminate foreign assistance furnished under a sub-award that violates any award terms required by sub-paragraphs (8)(i)–(iii), above, or fails to take other appropriate corrective action consistent with sub-paragraph (8)(iv) above.

(11) Recipient acknowledges that authorized representatives of the U.S. Government may make independent inquiries in the community served by the recipient or a sub-recipient under this award regarding whether it is in compliance with the award terms required by sub-paragraphs (8)(i)–(iii) above. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

## II. Grants and Cooperative Agreements With U.S. Nongovernmental Organizations

(1) The recipient agrees that it will not, during the term of this award, outside the United States (including its territories and possessions), engage in unlawful DEI-related discrimination.

(2) The recipient agrees that, within the scope of any program, project, or activity for which foreign assistance funds are made available under this award it will not promote discriminatory equity ideology or engage in unlawful DEI-related discrimination.

Subject to sub-paragraph (1), the recipient is not prohibited from promoting discriminatory equity ideology outside the scope of a program, project, or activity for which funds are made available under this award, so long as the recipient uses funds from sources other than the U.S. Government to do so.

(3) The recipient agrees that any program, project, or activity for which funds are made available under this award must be organized so that the program, project, or activity is physically and financially separate from activities prohibited by sub-paragraph (2) above (“prohibited activities”), such that there is an objective integrity and independence from such activities. Mere bookkeeping separation of funds under the award from other monies is not sufficient. Whether such objective integrity and independence exist will be determined based on a review of facts and circumstances, including:

(i) The existence of separate, accurate accounting records;

(ii) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, and educational services) in which the prohibited activities occur and the extent of such prohibited activities;

(iii) The existence of separate personnel, electronic or paper-based health care records (if applicable), and workstations; and

(iv) The extent to which signs and other forms of identification are present, and signs and material that refer to, promote, or constitute, prohibited activities, are absent.

(4) The recipient agrees that authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the Code of Federal Regulations (CFR): (i) inspect the documents, trainings, and materials maintained or prepared by the recipient in the usual or required course of its operations that describe the priorities and activities of the recipient, including reports, brochures and service statistics; (ii) observe the activities conducted by the recipient, (iii) consult with personnel of the recipient and those who receive the services of the recipient; and, (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable.

(5) In the event an authorized representative of the U.S. Government has reasonable cause to believe that the recipient may have violated any of its undertakings under this award term, the recipient must make available to such authorized representative such books and records and other information as the authorized representative may reasonably request to determine whether a violation of that undertaking has occurred, consistent with Part 200 of Title 2 of the CFR.

(6) U.S. foreign assistance furnished to the recipient under this award must be terminated if the recipient violates any undertaking required by this award term, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(7) In addition to other remedies available to the U.S. Government, the recipient's failure to comply with the requirements of this award provision may result in—

(i) Suspension of payments until the recipient has taken appropriate action; and/or

(ii) Suspension or debarment.

(8) In the event of termination, the recipient must refund to the Department of

State any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to engage in activities prohibited under the terms of this award while receiving funding under this award. The amount to be refunded to the Department of State under this subparagraph (8) may not exceed the total amount of foreign assistance furnished under this award.

(9) The recipient agrees that it will not furnish foreign assistance under this award to any other foreign NGO, IO, or United States non-governmental organization (NGO), (the sub-recipient), unless the recipient's agreement with the sub-recipient contains the same terms and conditions as described in subparagraph (10), below.

(10) Prior to entering into an agreement to furnish foreign assistance to a foreign NGO, IO, or United States NGO, (the sub-recipient) under this award, the recipient must ensure that such agreement with the sub-recipient includes the following terms:

(i) While receiving foreign assistance under this award:

(A) If the sub-recipient is a foreign NGO or IO, the sub-recipient will not promote discriminatory equity ideology, engage in unlawful DEI-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

(B) If the sub-recipient is a United States NGO:

(1) the sub-recipient will not, outside the United States (including its territories and possessions) engage in unlawful DEI-related discrimination, an

(2) the sub-recipient will not, within the scope of any program, project, or activity for which foreign assistance funds are made available under this award, promote discriminatory equity ideology or engage in unlawful DEI-related discrimination.

Subject to sub-paragraph (10)(i)(B)(1) above, the sub-recipient is not prohibited from lawfully promoting discriminatory equity ideology outside the scope of a program, project, or activity for which funds are made available under this award, so long as the sub-recipient uses funds from sources other than the U.S. Government to do so.

(3) The sub-recipient agrees that any program, project, or activity for which funds are made available under this award must be organized so that the program, project, or activity is physically and financially separate from activities described in sub-paragraph (10)(i)(B)(2) above (“prohibited activities”), such that there is an objective integrity and independence from such activities. Mere bookkeeping separation of funds under the award from other monies is not sufficient. Whether such objective integrity and independence exist will be determined based on a review of facts and circumstances, including:

(i) The existence of separate, accurate accounting records;

(ii) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, and educational services) in which the prohibited activities occur and the extent of such prohibited activities;

(iii) The existence of separate personnel, electronic or paper-based health care records (if applicable), and workstations; and

(iv) The extent to which signs and other forms of identification are present, and signs and material that refer to, promote, or constitute, prohibited activities, are absent.

(ii) The recipient and authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the CFR: (I) inspect the documents, trainings, and materials maintained or prepared by the sub-recipient in the usual or required course of its operations that describe the priorities and activities of the sub-recipient, including reports, brochures and service statistics; (II) observe the activities conducted by the sub-recipient; (III) consult with personnel of the sub-recipient and those who receive the services of the sub-recipient; and, (IV) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable.

(iii) In the event that the recipient or an authorized representative of the U.S. Government has reasonable cause to believe that a sub-recipient may have violated any of its undertakings under this award term, the recipient will review the foreign assistance program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to the recipient such books and records and other information as may be reasonably requested to conduct the review. Authorized representatives of the U.S. Government may review the foreign assistance program of the sub-recipient under these circumstances, and the sub-recipient must provide access to such authorized representatives on a timely basis to such books and records and other information upon request, consistent with Part 200 of Title 2 of the CFR.

(iv) The U.S. Government shall terminate foreign assistance provided to the sub-recipient under this award if the sub-recipient violates any award terms required by subparagraphs (10)(i)–(iii) above, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(v) In addition to other remedies available to the U.S. Government, the sub-recipient's failure to comply with the requirements of this award provision may result in—

(A) Suspension of payments until the sub-recipient has taken appropriate remedial action; and/or

(B) Suspension or debarment.

(vi) In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient for activities prohibited under the terms of this award, up to the total amount of foreign assistance furnished to the sub-recipient under this award. Where the Department of State is not otherwise engaged in the determination to terminate a recipient's sub-award, the recipient must notify the Department of State of any action taken for a violation of any undertaking required under subparagraphs (10)(i)–(iii) above; and

(vii) The sub-recipient may furnish foreign assistance under this award to a foreign NGO, IO, or United States NGO (the sub-sub-recipient), only if the sub-recipient's sub-agreement with the sub-sub-recipient contains the same terms and conditions as those provided by the recipient to the sub-recipient as described in sub-paragraphs (10)(i)–(iv) above.

(11) Where the terms and conditions of the award require the approval of subawards by the Department of State, the recipient must, consistent with Part 200 of Title 2 of the CFR, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing foreign assistance under this award.

(12) The recipient is liable to the Department of State for a refund for a violation by the sub-recipient of any requirement of this award term only if: (i) the recipient knowingly furnishes foreign assistance under this award to a sub-recipient, knowing that the subrecipient is in violation of the applicable award terms of this award term; or, (ii) the sub-recipient did not abide by its award terms required by subparagraphs (10)(i)–(iii) above, and the recipient failed to make reasonable due diligence efforts prior to furnishing foreign assistance to the sub-recipient; or, (iii) the recipient knows, or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (10)(i)–(iii) above, and the recipient fails to terminate foreign assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a sub-award that violates any award terms required by subparagraphs (10)(i)–(iii) above, or fails to take other appropriate corrective action consistent with subparagraph (10)(iv) above.

(13) Recipient acknowledges that authorized representatives of the U.S. Government may make independent inquiries in the community served by a sub-recipient under this award regarding whether such sub-recipient is in compliance with its award terms required by subparagraphs (10)(i)–(iii) above. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

### III. Grants and Cooperative Agreements With Foreign Governments and Parastatals

(1) The recipient agrees that foreign assistance funds it receives under this award will not be used to promote discriminatory equity ideology or to engage in unlawful DEI-related discrimination.

(2) The recipient agrees that if it engages in any activity described in sub-paragraph (1) using funds from sources other than the U.S. Government, any foreign assistance funds under this award must be placed in a segregated account to ensure that such funds may not be used to support such activity of the government or parastatal.

(3) The recipient agrees that authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the Code of Federal Regulations

(CFR): (i) inspect the documents, trainings, and materials maintained or prepared by the recipient in the usual or required course of its operations that describe the priorities and activities of the recipient, including reports, brochures and service statistics; (ii) observe the activities conducted by the recipient, (iii) consult with personnel of the recipient and those who receive the services of the recipient; and, (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable.

(4) In the event an authorized representative of the U.S. Government has reasonable cause to believe that the recipient may have violated any of its undertakings under this award term, the recipient must make available to such authorized representative such books and records and other information as the authorized representative may reasonably request to determine whether a violation of that undertaking has occurred, consistent with Part 200 of Title 2 of the CFR.

(5) U.S. foreign assistance furnished to the recipient under this award must be terminated if the recipient violates any undertaking required by this award term, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(6) In addition to other remedies available to the U.S. Government, the recipient's failure to comply with the requirements of this award provision may result in—

(i) Suspension of payments until the recipient has taken appropriate remedial action; and/or

(ii) Suspension or debarment.

(7) In the event of termination, the recipient must refund to the Department of State any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to engage in activities prohibited under the terms of this award while receiving funding under this award. The amount to be refunded to the Department of State under this subparagraph (7) may not exceed the total amount of foreign assistance furnished under this award.

(8) The recipient agrees that it will not furnish foreign assistance under this award to any foreign non-governmental organization (NGO), international organization (IO), or United States NGO (the sub-recipient), unless the recipient's agreement with the sub-recipient contains the same terms and conditions as described in sub-paragraph (9), below.

(9) Prior to entering into an agreement to furnish foreign assistance to a foreign NGO, IO, or a United States NGO (the sub-recipient) under this award, the recipient must ensure that such agreement with the sub-recipient includes the following terms:

(i) While receiving foreign assistance under this award:

(A) If the sub-recipient is a foreign NGO or IO, the sub-recipient will not, outside the United States (including its territories and possessions), promote discriminatory equity ideology, engage in unlawful DEI-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

(B) If the sub-recipient is a United States NGO:

(1) The sub-recipient will not, outside the United States (including its territories and possessions), engage in unlawful DEI-related discrimination.

(2) The sub-recipient will not, within the scope of any program, project, or activity for which foreign assistance funds are made available under this award, promote discriminatory equity ideology or engage in unlawful DEI-related discrimination.

Subject to sub-paragraph (9)(i)(B)(1) above, the sub-recipient is not prohibited from lawfully promoting discriminatory equity ideology outside the scope of a program, project, or activity for which funds are made available under this award, so long as the sub-recipient uses funds from sources other than the U.S. Government to do so.

(3) The sub-recipient agrees that any program, project, or activity for which funds are made available under this award must be organized so that the program, project, or activity is physically and financially separate from activities described in sub-paragraph (9)(i)(B)(2) above (“prohibited activities”), such that there is an objective integrity and independence from such activities. Mere bookkeeping separation of funds under the award from other monies is not sufficient. Whether such objective integrity and independence exist will be determined based on a review of facts and circumstances, including:

(i) The existence of separate, accurate accounting records;

(ii) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, and educational services) in which the prohibited activity occurs and the extent of such prohibited activities;

(iii) The existence of separate personnel, electronic or paper-based health care records (if applicable), and workstations; and

(iv) The extent to which signs and other forms of identification are present, and signs and material that refer to, promote, or constitute, prohibited activities, are absent.

(ii) The recipient and authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the CFR: (I) inspect the documents, trainings, and materials maintained or prepared by the sub-recipient in the usual or required course of its operations that describe the priorities and activities of the sub-recipient, including reports, brochures and service statistics; (II) observe the activities conducted by the sub-recipient; (III) consult with personnel of the sub-recipient and those who receive the services of the sub-recipient; and, (IV) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable.

(iii) In the event that the recipient or an authorized representative of the U.S. Government has reasonable cause to believe that a sub-recipient may have violated any of its undertakings under this award term, the recipient will review the foreign assistance program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make

available to the recipient such books and records and other information as may be reasonably requested to conduct the review. Authorized representatives of the U.S. Government may review the foreign assistance program of the sub-recipient under these circumstances, and the sub-recipient must provide access to such authorized representatives on a timely basis to such books and records and other information upon request, consistent with Part 200 of Title 2 of the CFR.

(iv) The U.S. Government shall terminate foreign assistance provided to the sub-recipient under this award if the sub-recipient violates any award terms required by subparagraphs (9)(i)–(iii) above, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(v) In addition to other remedies available to the U.S. Government, the sub-recipient's failure to comply with the requirements of this award provision may result in—

(A) Suspension of payments until the sub-recipient has taken appropriate remedial action; and/or

(B) Suspension or debarment.

(vi) In the event of termination, the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient for activities prohibited under the terms of this award, up to the total amount of foreign assistance furnished to the sub-recipient under this award. Where the Department of State is not otherwise engaged in the determination to terminate a recipient's sub-award, the recipient must notify the Department of State of any action taken for a violation of any undertaking required under subparagraphs (9)(i)–(iii) above.

(vii) The sub-recipient may furnish foreign assistance under this award to a foreign NGO, IO, or United States NGO, only if the sub-recipient's sub-agreement with the sub-sub-recipient contains the same terms and conditions as those provided by the recipient to the sub-recipient as described in subparagraphs (9)(i)–(iv) above.

(10) Where the terms and conditions of the award require the approval of subawards by the Department of State, the recipient must, consistent with Part 200 of Title 2 of the CFR, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing foreign assistance under this award.

(11) The recipient is liable to the Department of State for a refund for a violation by the sub-recipient of any requirement of this award term only if: (i) the recipient knowingly furnishes foreign assistance under this award to a sub-recipient that is a foreign NGO or IO, or to a United States NGO, knowing that the subrecipient is in violation of the applicable award terms of this award term; or, (ii) the sub-recipient did not abide by its award terms required by subparagraphs (9)(i)–(iii) above, and the recipient failed to make reasonable due diligence efforts prior to furnishing foreign assistance to the sub-recipient; or, (iii) the recipient knows, or has reason to know, by virtue of the monitoring that the recipient is

required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (9)(i)–(iii) above, and the recipient fails to terminate foreign assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a sub-award that violates any award terms required by subparagraphs (9)(i)–(iii) above, or fails to take other appropriate corrective action consistent with subparagraph (9)(iv) above.

(12) Recipient acknowledges that authorized representatives of the U.S. Government may make independent inquiries in the community served by a sub-recipient under this award regarding whether such sub-recipient is in compliance with its award terms required by subparagraphs (9)(i)–(iii) above. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

#### **IV. Grants, Cooperative Agreements, and Voluntary Contributions to International Organizations**

(1) The recipient agrees that it will not, during the term of this award, outside the United States (including its territories and possessions) promote discriminatory equity ideology, engage in unlawful diversity, equity, and inclusion (DEI)-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

(2) The recipient agrees that authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the Code of Federal Regulations (CFR): (i) inspect the documents, trainings, and materials maintained or prepared by the recipient in the usual or required course of its operations that describe the priorities and activities of the recipient, including reports, brochures and service statistics; (ii) observe the activities conducted by the recipient, (iii) consult with personnel of the recipient and those who receive the services of the recipient; and, (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

(3) In the event authorized representatives of the U.S. Government have reasonable cause to believe that the recipient may have violated any undertaking required by this award term, the recipient must make available to the Department of State such books and records and other information as the Department of State may reasonably request to determine whether a violation of that undertaking has occurred, consistent with Part 200 of Title 2 of the CFR. In such an event, during the process of investigating any suspected violation, the Department of State may additionally suspend or withhold some or all payments of foreign assistance to the recipient.

(4) The U.S. Government shall terminate foreign assistance furnished to the recipient under this award if the recipient violates any undertaking required by this award term, unless the Department of State determines,

consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(5) In the event of termination, the recipient must refund to the Department of State any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to engage in any activity that violates this award term while receiving funding under this award. The amount to be refunded to the Department of State under this subparagraph (5) may not exceed the total amount of foreign assistance furnished under this award.

(6) The recipient may not furnish foreign assistance under this award to any other foreign NGO, IO, or United States NGO, unless the recipient's agreement with the sub-recipient contains the same terms and conditions as described in subparagraph (7) below.

(7) Prior to entering into an agreement to furnish foreign assistance to any other foreign NGO, IO, or United States NGO, the recipient, consistent with Part 200 of Title 2 of the CFR, must ensure that such agreement with the sub-recipient includes the following terms:

(i) While receiving foreign assistance under this award,

(A) if the sub-recipient is a foreign NGO or IO, the sub-recipient will not, outside the United States (including its territories and possessions), promote discriminatory equity ideology, engage in unlawful DEI-related discrimination, or provide financial support to any other foreign NGO or IO that conducts such activities.

(B) if the sub-recipient is a United States NGO:

(1) The sub-recipient will not, outside the United States (including its territories and possessions), engage in unlawful DEI-related discrimination.

(2) The sub-recipient will not, within the scope of any program, project, or activity for which foreign assistance funds are made available under this award, promote discriminatory equity ideology or engage in unlawful DEI-related discrimination.

Subject to subparagraph (7)(i)(B)(1) above, the sub-recipient is not prohibited from lawfully promoting discriminatory equity ideology uses outside the scope of a program, project, or activity for which funds are made available under this award, so long as the sub-recipient funds from sources other than the U.S. Government to do so.

(3) The sub-recipient agrees that any program, project, or activity for which funds are made available under this award must be organized so that the program, project, or activity is physically and financially separate from the activities described in subparagraph (7)(i)(B)(2) above ("prohibited activities"), such that there is an objective integrity and independence from such activities. Mere bookkeeping separation of funds under the award from other monies is not sufficient. Whether such objective integrity and independence exist will be determined based on a review of facts and circumstances, including:

(i) The existence of separate, accurate accounting records;

(ii) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, and educational services) in which the prohibited activities occurs and the extent of such prohibited activities;

(iii) The existence of separate personnel, electronic or paper-based health care records (if applicable), and workstations; and

(iv) The extent to which signs and other forms of identification are present, and signs and material that refer to, promote, or constitute, prohibited activities, are absent.

(ii) The recipient and authorized representatives of the U.S. Government may, at any reasonable time, announced or unannounced, consistent with Part 200 of Title 2 of the CFR: (I) inspect the documents, trainings, and materials maintained or prepared by the sub-recipient in the usual or required course of its operations that describe the activities of the sub-recipient, including reports, brochures and service statistics; (II) observe activities conducted by the sub-recipient; (III) consult with personnel of the sub-recipient and those who receive the services of the sub-recipient; and, (IV) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable.

(iii) In the event that the recipient or an authorized representative of the U.S. Government has reasonable cause to believe that a sub-recipient may have violated any of its undertakings under this award term, the recipient will review the foreign assistance program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to the recipient such books and records and other information as may be reasonably requested to conduct the review. Authorized representatives of the U.S. Government may review the foreign assistance program of the sub-recipient under these circumstances, and the sub-recipient must provide access on a timely basis to such authorized representatives to such books and records and other information upon request, consistent with Part 200 of Title 2 of the CFR. In such an event, during the process of investigating any suspected violation, the Department of State may additionally order the recipient to suspend or withhold some or all payments of foreign assistance to the sub-recipient.

(iv) The U.S. Government shall terminate foreign assistance provided to the sub-recipient under this award if the sub-recipient violates any award terms under subparagraphs (7)(i)–(iii) above, unless the Department of State determines, consistent with § 200.339 of Title 2 of the CFR, that other corrective action is warranted.

(v) In addition to other remedies available to the U.S. Government, the sub-recipient's failure to comply with the requirements of this award provision may result in—

(A) Suspension of payments until the sub-recipient has taken appropriate remedial action; and/or

(B) Suspension or debarment.

(vi) In the event of termination, the sub-recipient must refund to the recipient any

unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient for activities prohibited under the terms of this award, up to the total amount of foreign assistance furnished to the sub-recipient under this award. Where the Department of State is not otherwise engaged in the determination to terminate a sub-recipient's award, the recipient must notify the Department of State of any action taken for a violation of any undertaking required under subparagraphs (7)(i)–(iii) above.

(vii) The sub-recipient may furnish foreign assistance under this award to any foreign NGO, IO, or U.S. NGO, only if the sub-recipient's agreement with the sub-recipient contains the same terms and conditions as those provided by the recipient to the sub-recipient as described in subparagraphs (7)(i)–(iv) above.

(8) Where the terms and conditions of the award require the approval of sub-awards by the Department of State, the recipient must, consistent with Part 200 of Title 2 of the CFR, include a description of the due diligence performed by the recipient on the sub-recipient before furnishing foreign assistance under this award.

(9) The recipient is liable to the U.S. Government for a refund for a violation by the sub-recipient of any requirement of this award term only if: (i) the recipient furnishes foreign assistance under this award to a subrecipient knowing that the subrecipient is in likely violation of the applicable award terms of this award term; (ii) the sub-recipient did not abide by the award terms required by subparagraphs (7)(i)–(iii) above, and the recipient failed to make reasonable due diligence efforts prior to furnishing foreign assistance to the sub-recipient; or, (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (7)(i)–(iii) above, and the recipient fails to terminate foreign assistance to the sub-recipient, or fails to require the sub-recipient to terminate foreign assistance furnished under a sub-award that violates any award terms required by subparagraphs (7)(i)–(iii), above, or fails to take other appropriate corrective action consistent with subparagraph (7)(iv) above.

(10) Recipient acknowledges that authorized representatives of the U.S. Government may make independent inquiries in the community served by the recipient or a sub-recipient under this award regarding whether it is in compliance with the award terms required by subparagraphs (7)(i)–(iii) above. Interaction with service recipients will comply with all applicable rules and regulations regarding privacy.

**Christopher T. Landau,**

*Deputy Secretary of State, U.S. Department of State.*

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