



USAID
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ADS Chapter 115

Employee Non-Labor Organizations

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This is a new chapter.

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ADS 115 – Employee Non-Labor Organizations

115.1 OVERVIEW

Effective Date: 07/06/2023

This chapter sets forth the Agency’s policies and procedures required to establish and maintain a communicative and consultative relationship with social, fraternal, professional, or other lawful organizations not qualified as a labor organization in compliance with Part 251 of Title 5 of the U.S. Code of Federal Regulations (CFR). [5 CFR § 251](#) provides the framework for federal executive branch consultation and communication with such non-labor organizations (NLOs) representing Agency employees (i.e., U.S. direct hire personnel, or “USDH”) and personal services contractors (PSCs) on matters or policies related to Agency operations and personnel management that involve individual members of the organization or are of particular applicability to it or its members.

This chapter does not govern the creation or establishment of any NLO, as such organizations are private, non-federal entities by law; rather this chapter governs whether and to what extent the Agency and its employees and PSCs may use Agency resources (e.g., official time, information, and property) in connection with an NLO. Additionally, NLOs are not required to consult with management, but may elect to seek Agency recognition as a way to facilitate networking, hosting events, and/or conducting open forums. The Agency may recognize an NLO as an Employee Resource Group (ERG) in accordance with the criteria and procedures outlined in this chapter.

This chapter does not apply to overseas employee associations governed by the Department of State. Please see [6 FAM 500](#) for the rules governing such associations.

115.2 PRIMARY RESPONSIBILITIES

Effective Date: 07/06/2023

- a. The **Chief Diversity, Equity, Inclusion, and Accessibility Officer (CDO)** in the Office of the Administrator is responsible for managing the relationship between the Office of the Administrator and ERGs. The CDO has the responsibility of making the final determination as to whether to recognize an NLO as an ERG based on criteria outlined in this ADS chapter and input from appropriate Agency stakeholder Bureaus.
- b. The **Office of the Administrator, Immediate Office, Office of the Chief Diversity, Equity, Inclusion, and Accessibility Officer (A/AID/DEIA)** manages the Agency’s DEIA program and the Agency’s consultative relationships with ERGs.
- c. The **Office of Civil Rights (OCR)** leverages NLOs and labor organization bargaining units in efforts to advance and assist the Agency in implementing USAID’s strategies to ensure equality of opportunity and affirmative employment when conducting barrier analysis for the Agency’s annual Management Directive 715 (MD-715) report. OCR/Affirmative Employment leverages ERGs for qualitative data as part of

barrier analyses for the workforce and may collaborate with ERGs for commemorative month celebrations.

d. The **Office of Human Capital and Talent Management (HCTM)** is responsible for ensuring Agency compliance with applicable labor-management laws, regulations, and policies.

e. The **Bureau for Management (M)** is responsible for administering rules with respect to rooms, bulletin boards, and information technology resources and ensuring Agency compliance with applicable acquisition and assistance policies, regulations, and procedures.

f. The **Office of the General Counsel, Ethics and Administration Division (GC/EA)** provides advice and guidance to Agency management on this chapter, including requests for the Agency to recognize an NLO as an ERG to ensure compliance with all laws and policies. GC/EA does not provide advice or counsel to NLOs.

115.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 07/06/2023

NLOs may organize as a way to network, host events, or conduct open forums around a common interest. The purposes of the Agency's consultation and communication with NLOs are as follows: to improve Agency operations, personnel management, and effectiveness; and facilitate the exchange of information (e.g., ideas, opinions, and proposals).

The Agency's consultation and communication with NLOs may not take on the character of negotiations or consultations regarding terms and conditions of employment of bargaining unit employees, which is reserved exclusively for labor organizations as provided in [5 U.S.C. Chapter 71](#) or comparable provisions of other laws. Further, management officials may not engage NLOs to the extent that this may constitute representation exclusively assigned to a labor organization under 5 U.S.C. § 7114(a)(2) or 22 U.S.C. § 4113(b)(1), or otherwise attempt to bypass a union by soliciting information directly from bargaining unit employees who are members of an NLO. Finally, Agency consultation with a recognized ERG may not pertain to any matter that involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of federal funds to the organization or group.

The Agency does not recognize ERGs as unions, including for purposes of collective bargaining or formal representation of members of the USAID workforce. Agency management must not negotiate any conditions of employment with any NLO, regardless of whether the Agency has recognized the NLO as an ERG.

The Agency may determine that it is in its interest to consult, from time to time, with organizations other than labor organizations, such as NLOs, to the extent permitted by law, but it is not required to do so.

115.3.1 General Parameters of Agency Accommodation and Use of Agency Resources for Non-Labor Organizations

Effective Date: 07/06/2023

- (a) “Accommodation” as used in this chapter is a broad term used to describe Agency arrangements concerning engagement with NLOs, their events, or activities, or permission for NLOs' limited use of Agency resources in furtherance of their events or activities.
- (b) The Agency may accommodate NLOs when the Agency determines that such action would benefit the Agency’s programs or would be warranted as a service to employees and PSCs who are members of the organization. A/AID/DEIA makes such recommendations with respect to ERG applicants.
- (c) The Agency’s accommodation does not mean the Agency or the Federal Government officially sponsors, sanctions, or endorses the NLO or its views and activities. NLOs may not engage in any activities that adversely reflect on USAID. The activities, programs, products, or services of any NLO must not be represented, directly or indirectly, as being official functions or activities of the Agency.
- (d) Pursuant to [Executive Order \(E.O.\) 10988](#), as amended, consultations and dealings with NLOs must be limited so that they do not assume the character of formal consultation on matters of general employee-management policy or extend to areas where recognition of the interests of one NLO may result in discrimination against or injury to the interests of other employees or PSCs.
- (e) The description of and criteria for Agency accommodation are as follows:
 1. *Compliance with law and regulation* - Agency accommodation must comply with applicable law and Agency policies.
 2. *Use of "USAID" in NLO name* - Use of "USAID" or its logo cannot be used to imply federal or Agency sponsorship, sanction, or endorsement of the NLO or its views and/or activities. An NLO using "USAID," "U.S. Agency for International Development," or similar, or Operating Units (OUs) in the NLO name must include a disclaimer in correspondence, promotional, and fundraising materials stating that the NLO is a private organization and is not a part of and does not represent USAID or the U.S. Government.
 3. *Use of Agency property* - Upon request from a recognized ERG, DEIA may agree to the use of Agency resources such as facilities or equipment, publications, and bulletin boards in accordance with appropriate

regulations, such as M Bureau rules with respect to rooms, bulletin boards, and information technology resources, as well as General Services Administration (GSA) regulations contained in Title 41 of the CFR, or any other applicable rule or regulation. **Surveys and other data collection of Agency workforce staff (employees, PSCs, and other contractor staff) by NLOs using Agency resources, including Agency government-furnished equipment and information technology resources, are prohibited.** All authorized use of Agency government-furnished equipment and information technology resources to conduct the business of the NLO in compliance with this policy must adhere to and falls under Agency policies, including but not limited to the [ADS 500 series](#).

4. *Use of Agency time* - Pursuant to 5 CFR § 2635.705, an employee must use official duty time in an honest effort to perform official duties. **Employees and PSCs are prohibited by law from being granted official duty time or administrative leave for NLO-related matters, including attendance at NLO-sponsored events and meetings. However, managers and supervisors are encouraged to allow attendance at such events and meetings, consistent with applicable rules governing leave and hours of work (e.g., flexible work schedule).** This prohibition does not apply to Agency-sponsored events. Attendance at or participation in training is governed by [ADS 458, Training and Career/Professional Development](#).
5. *Communications with the Agency* - ERGs that would like to submit Agency Notices must prepare the correspondence in accordance with [ADS 504, Agency Notices](#). A/AID/DEIA, or their designee, normally reviews notices within three business days and, upon clearance, serve as the Authorized Notice Sender.

ERGs that would like to submit correspondence to or request meetings with senior Agency leaders must prepare the correspondence in accordance with the rules or examples established by the Executive Secretariat. ERGs must submit their correspondence to A/AID/DEIA for processing. A/AID/DEIA will obtain clearances and submit correspondence as appropriate, considering, among other rules, section **115.3.1(c)**. A/AID/DEIA is the sole decision maker in determining what is appropriate.

From time to time, it may be in the interest of the Agency to hold meetings with representatives of one or more ERGs. Such meetings are held at the Agency's discretion and must comply with sections **115.3.1(c)**, **115.3.1(d)(4)**, and federal law. For example, employees and PSCs, including management officials and supervisors, may communicate with any federal agency, officer, or other federal entity on their own behalf.

Employees and PSCs should be aware that a criminal law, 18 U.S.C. § 205, in pertinent part, prohibits them from acting, other than in the proper discharge of their official duties, as agents or attorneys for any person or organization other than a labor organization, before any federal agency or other federal entity in connection with any matter in which the United States is a party or has a direct and substantial interest. An exception permits employees and PSCs to represent certain nonprofit organizations, such as NLOs, before the government except in connection with any matter that involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of federal funds to the organization or group. However, this exception does not permit a Civil Service (CS) or Foreign Service (FS) employee to communicate to or appear before the Agency on behalf of an NLO when the majority of its members are not USAID employees (i.e., non-USDHs). Agency officials and employees are therefore advised to consult with an Agency Ethics Official for guidance regarding any conflicts of interest that may arise. Internal communication among NLO members does not require clearance from A/AID/DEIA.

6. *Agency information* - NLOs, including Agency-recognized ERGs, do not serve a role in any Agency grievance process, nor may they prohibit individuals from going directly to management/HCTM or OCR for issues of individual concern. Members of the USAID workforce are prohibited from sharing personnel-sensitive information with any NLO or its representatives. No exception to law or policy governing the handling, storage, or sharing of information exists for the purposes of engagement with NLOs, regardless of whether they are recognized by the Agency as an ERG. Members of the USAID workforce who access or handle sensitive information in the course of their assigned duties should bear in mind that NLOs are private, non-federal entities.

From time to time, the Agency may, at its discretion, decide to share information regarding internal deliberative processes or decision-making with ERGs where the Agency determines that this would further the interests or mission of the Agency. These interactions may be isolated and should not be considered to occur continuously or in all situations. This does not constitute any right or entitlement to such information for ERGs.

7. *Fundraising for NLO-related activities* - While on duty, or using or on Agency property, an NLO may (if first approved by A/AID/DEIA) raise funds only among their own members for organizational support or for the benefit of welfare funds for their members, so long as the fundraising adheres to federal laws and regulations and any other relevant Agency rules or policies. This includes the rules prohibiting gambling in the workplace as well as the rules prohibiting solicitations of subordinates,

solicitations by CS or FS employees of Agency contractors and contractor staff, including PSCs, and solicitations by PSCs of non-PSC contractors and contractor staff.

8. *Agency Funding for NLOs* - No Agency funding will be provided to NLOs.

115.3.2 Requirements of Non-Labor Organizations to Receive Agency Accommodation

Effective Date: 07/06/2023

To establish and maintain a consultative relationship with the Agency as an ERG, an NLO:

1. Must be a lawful, nonprofit organization whose governing documents (including charter and bylaws) indicate that it subscribes to minimum standards of fiscal responsibility and employs democratic principles in the nomination and election of officers. An NLO does not need to formally incorporate under state law or seek tax-exempt status from applicable tax authorities in order to comply with this requirement. Fiscal responsibility entails the following:
 - a. Regular updates on fiscal matters, if applicable, including updates on the organization's finances; and
 - b. An account established solely for the purposes of the NLO if dues or funds are collected. Dues, if collected, may only be collected from the organization's members and must be used solely for the direct benefit of the organization's members and activities.
2. Must not discriminate in terms of membership or treatment because of race, color, national origin, age, religion, sex (including pregnancy, sexual orientation, and gender identity), disability, genetic information, military service, political affiliation, marital status, or one's involvement with legally protected activity (such as the Equal Employment Opportunity (EEO) process or reporting prohibited personnel practices or waste of public funds, violations of the law, or abuse of authority). The organization must include such a policy statement in its governing documents.
3. Must be composed, at over half the organization's membership, of current employees and/or PSCs. While NLOs are not limited in membership to only USAID employees, the Agency will not take into consideration recommendations that primarily affect other government or private entities or persons; ERG leadership must be limited to USAID CS employees, FS employees, and PSCs.
4. Must be open to all employees and PSCs and in all Agency OUs (unless membership is restricted, by charter, to employees with specific professional attributes, job positions, etc.).

5. Must not communicate to or appear before the Agency or any other federal agency or court concerning the disbursement of federal funds to the organization or group other than as permitted in section **115.3.1(d)(4)**.
6. Must not assist or participate in a strike, work stoppage, or slowdown against the Government of the United States or any agency thereof or impose a duty or obligation to conduct, assist, or participate in such strike, work stoppage, or slowdown.
7. Must not advocate the overthrow of the constitutional form of the Government of the United States.
8. Must comply with all other applicable law and Agency policy, including the Standards of Ethical Conduct.
9. Must have a proposed purpose that is sufficiently distinguishable from other ERGs such that the Agency's engagement with both groups would not result in duplication of efforts.

115.3.3 Procedures for Agency Recognition of a Consultative Relationship with Employee Resource Groups

Effective Date: 07/06/2023

- A. The following procedures apply to organizations seeking to establish a consultative relationship with the Agency as an ERG:
 1. The organization must submit a written request in accordance with the guidelines and format provided by A/AID/DEIA to be recognized by the Agency. A/AID/DEIA reviews the packet and convenes necessary consultations with Agency stakeholder Bureaus and Independent Offices (B/IOs). A/AID/DEIA normally provides a response to the NLO regarding their request within 45 days.
 2. The request must include at least the following:
 - a. The name of the organization;
 - b. A statement regarding why the organization believes an official consultative relationship should be established as an ERG, including that the organization meets the requirements of section **115.3.2(a)(1)-(3)** as outlined within this chapter and how and why the organization meets the definition herein of an ERG;
 - c. A copy of the organization's governing documents (charter/constitution and bylaws), which must indicate how elections will be conducted and how often, including when elected positions are vacated;

- d. A list of the organization's current leadership, including names, position in the organization, hiring type or contracting mechanism, and personal contact information; and
 - e. Certification by an officer of the number of current members and that a majority of members are current federal employees and/or PSCs (i.e., that representation in the organization is substantial enough to warrant the Agency's consideration of such a relationship).
- B.** If necessary, the Agency may request additional documentation or clarity on provided material. A/AID/DEIA must prepare a written response addressed to the organization indicating whether the request was approved or denied. If denied, A/AID/DEIA must include in the response the reason for the denial. There is no appeal process to this decision.
- C.** Organizations that have been denied recognition may, at their discretion, restructure the documentation and submission to meet established criteria and resubmit an amended application no sooner than 180 calendar days after receiving the written notification of disapproval from A/AID/DEIA.
- D.** ERGs must submit updated or revised governing documents when there are significant and substantive changes made to them. A/AID/DEIA reaches out to recognized ERGs at least every two years following the date of initial recognition under this chapter to ensure that the ERG still exists and is in compliance with existing governing documents.
- E.** ERGs may be decertified either through self-determination or if the Agency determines that the organization no longer adheres to democratic principles, fiscal responsibility, Agency guidelines for ERGs, or if the organization no longer warrants a consultative relationship with the Agency.

115.4 MANDATORY REFERENCES

115.4.1 External Mandatory References

Effective Date: 07/06/2023

- a. [5 CFR § 251](#)
- b. [5 CFR § 2635.705](#)
- c. [5 CFR § 550.311\(b\)](#)
- d. [29 CFR § 1614](#)
- e. [5 U.S.C. Chapter 71](#)

- f. [18 U.S.C. § 205\(d\)](#)
- g. [EEOC Management Directive 715](#)
- h. [Executive Order 11491, as amended](#)
- i. [Executive Order 13548 - Increasing Federal Employment of Individuals with Disabilities](#)
- j. [Executive Order 13583 - Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce](#)

115.4.2 Internal Mandatory References

Effective Date: 07/06/2023

- a. [ADS 110, Equal Employment Opportunity Program](#)
- b. [ADS 111, Procedures for Providing Reasonable Accommodation](#)
- c. [Diversity, Equity and Inclusion Strategic Plan - 2021 - 2024](#)
- d. [USAID Policy Statement on Equal Employment Opportunity](#)

115.5 ADDITIONAL HELP

Effective Date: 07/06/2023

There are no additional help documents for this chapter.

115.6 DEFINITIONS

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Accessibility

The design, construction, development, and maintenance of facilities, information and communication technology, programs, and services so that all people, including persons with disabilities, can fully and independently use them. Accessibility includes the provision of accommodations and modifications to ensure equal access to employment and participation in activities for persons with disabilities, the reduction or elimination of physical and attitudinal barriers to equitable opportunities, a commitment to ensuring that persons with disabilities can independently access every outward-facing and internal activity or electronic space, and the pursuit of best practices such as universal design. (**Chapter [111](#) and [115](#))**

Diversity

The variety of similarities and differences within the workforce that include, but are not limited to, the following: race, ethnicity, sex, sexual orientation, gender, gender identity, gender expression, sex characteristics, disability, native or Indigenous origin, age,

generation, culture, religion, belief system, marital status, parental status, socioeconomic status, appearance, language and accent, education, geography, nationality, lived experience, job function, personality type, and thinking style. (**Chapter [111](#) and [115](#)**)

Employee

An individual defined in 5 U.S.C. § 2105 (i.e., an individual appointed in the Civil Service, whether to career, term, or temporary positions, including members of the Foreign Service and political appointees). (**Chapter [111](#) and [115](#)**)

Employee Resource Group

A type of NLO consisting primarily of federal employees and/or PSCs with a common set of interests and goals that USAID has recognized as meeting the requirement of being able to hold a productive dialogue with management regarding Agency operations and employee/PSC engagement. (**Chapter [111](#) and [115](#)**)

Equity

The consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, including (but not limited to) Black, Latinx, and Indigenous and Native American persons, Asian Americans, Native Hawaiians, and Pacific Islanders, and other persons of color, members of religious minorities, lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality. (**Chapter [111](#) and [115](#)**)

Gambling

Any game of chance requiring payment of consideration for the opportunity to play the game, which offers a prize (even if donated to charity). A “game of chance” includes, but is not limited to, a raffle, lottery, sports pool, game of cards, the selling or purchasing of a numbers slip or ticket, or any game for money or property. “Consideration” includes a participation fee, a wager of money, and something of value in return for the possibility of winning a reward or prize. A “prize” would include a monetary award, or a tangible or intangible item. Examples include meals, drinks, gift certificates, tickets to events, or cash. (**Chapter [111](#) and [115](#)**)

Inclusion

A dynamic state in which diversity is leveraged to create a fair, healthy, and high-performing organization or community. An inclusive environment is safe, respectful, engaging, celebratory, and motivating and values the unique contributions of each employee and PSC in fulfilling USAID’s mission. (**Chapter [111](#) and [115](#)**)

Labor Organization

An organization as defined in 5 U.S.C. § 7103(a)(4), which is in compliance with 5 U.S.C. § 7120, or as defined in 22 U.S.C. § 4102(11), which is in compliance with 22 U.S.C. § 4117, and generally composed in whole or in part of employees who

participate and pay dues with an agency on grievances and conditions of employment. (Chapter [111](#) and [115](#))

Non-labor Organization (NLO)

An organization other than a labor organization that, in accordance with 5 C.F.R. § 251 contributes to employee or PSC general welfare and morale. An NLO provides information, views, and services that contribute to improved agency operations, personnel management, and employee or PSC effectiveness. At USAID, an NLO may be recognized as an ERG, based on the definitions and criteria above. (Chapter [111](#) and [115](#))

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