



**USAID**  
FROM THE AMERICAN PEOPLE

**CIB 99-22 “PSC Regulation as Relates to the FAM or Rules Administered by Other Agencies,” is archived, effective June 15, 2016, because its requirements have been incorporated in ADS 309.**

October 12, 1999

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: M/OP, Rodney W. Johnson, Director

SUBJECT: PSC Policy

CONTRACT INFORMATION BULLETIN 99 - 22

Due to repeated questions regarding the application of FAM provisions to USAID PSCs, we believe it would be helpful to restate the basic regulatory framework of USAID's personal services authority and its relationship to various provisions of the Foreign Affairs Manual ("FAM"), as well as benefits administered by other agencies.

1. For salary, meritorious step increases, leave and other terms of employment under the control of USAID, the governing Agency regulations on PSCs are AIDAR Appendices D and J and ADS 495 - Foreign Service Nationals, **not** 3 FAM 7000 or 3 FAM 8200. While USAID's general policy is to be consistent with the FAM, especially on foreign national PSCs, the source of agency policy and regulations for USAID PSCs is the AIDAR and ADS.

2. The provisions in 3 FAM 7000 - Foreign Service National Personnel and 3 FAM 8200 Appendix A (Old 3 FAM 123) - Methods of Employment - do **not** apply to USAID's PSCs, unless the AIDAR or ADS makes a particular FAM provision applicable. Any reference in those FAM provisions to foreign service national ("FSN") employees or PSCs is to be read as **not** applying to USAID PSCs. For example, ADS 495 applies certain provisions of 3 FAM 7200 to USAID's foreign national PSCs. On the other hand, 3 FAM 7224.2-3 - U.S. Citizenship - provides that an FSN employee who has U.S. citizenship must be terminated. Since it has not been made applicable by the ADS or the AIDAR, that provision does not apply to USAID PSC positions.

We are in the process of amending 3 FAM 7000 to make it clear that it does not apply to USAID PSCs. We are also revising the AIDAR Appendices and reviewing ADS 495 to make sure that we have only applied those 3 FAM 7000 provisions that are necessary.

3. The following benefits in the FAM are **not** under the control of USAID. They are administered by the Department of State and, consequently, the FAM provisions are controlling:

a) Employee association and commissary privileges. U.S. citizen PSCs are entitled to employee association and commissary privileges under 6 FAM 500 - Employee Associations.

b) Pouch service. USAID U.S. citizen PSCs are entitled to pouch service on the same basis as direct-hire USAID employees under 5 FAM 340 - Diplomatic Pouch Mail.

c) Health room privileges. U.S. citizen PSCs are entitled to health room privileges on the same basis as direct-hire USAID employees under 3 FAM 1900 Appendix B (Old 3 FAM 680) - Medical and Health Program.

4. There are a number of benefits under the control of other agencies:

a) APO privileges. U.S. Citizen PSCs are eligible to use the military postal services on the same basis as USAID direct-hire employees under the regulations of the Military Postal Service Agency of the Department of Defense.

b) Federal Workers' Compensation ("FECA"). PSCs (regardless of citizenship) are Government employees for purposes of the Federal Employees Compensation Act, which is administered by the Division of Federal Employees' Compensation of the Department of Labor.

c) Unemployment Compensation. Under a recent ruling of the Department of Labor (Unemployment Insurance Program Letter No. 41-99, August 3, 1999) PSCs are **not** eligible for the Unemployment Compensation for Federal Employees Program ("UCFE").

## **2 FAM 222 EMPLOYEES OF DIPLOMATIC MISSIONS**

### **2 FAM 222.1 PRACTICE NOT UNIFORM ABROAD**

With the exception of the situation relating to U.S. nationals and permanent residents (2 FAM 231.2), full diplomatic immunity is granted in the residents (2 FAM 231.2), full diplomatic immunity is granted in the United States to all members of a diplomatic mission who are notified to and accepted by the Department of State. Practice abroad is not uniform in this respect, however. Many governments refuse to accord immunity to members of diplomatic missions other than diplomatic officers, whether they are nationals of the sending stae, of the receiving state, or of a third state. Others grant immunity to all except their own nationals.

## **2 FAM 232.1-4 NATIONALS OR PERMANENT RESIDENTS OF UNITED STATES**

**(TL: GEN-268; 2-28-91)**

The general rules set forth above assume that the staff members of the diplomatic mission involved are nationals of the sending country or of some third country. Traditionally, governments are unwilling to surrender any jurisdiction over their own nationals, and the modern treaty regime states precise rules on this point. The United States, as a matter of policy, does not normally accept the accreditation of its own nationals or permanent residents as diplomatic agents but, were it to do so, such diplomatic agents would enjoy inviolability and jurisdictional immunity only in connection with the performance official acts. The family members of diplomatic agents enjoy no privileges or immunities if they are U.S. nationals. Members of the administrative and technical staff, members of the service staff, and family members of these persons enjoy no privileges and immunities if they are nationals or permanent residents of the United States.

Immunities should not be claimed for Foreign Service national employees or servants who are nationals of the country in which the consular posts are located. When there is a consular convention between the United States and the country concerned, the local employee will be accorded the immunity specified in the convention.

---

**3 FAM 1900 APPENDIX B OLD 3 FAM 680,  
MEDICAL AND HEALTH PROGRAM  
3 FAM 680 MEDICAL AND HEALTH PROGRAM  
3 FAM 681 GENERAL PROVISIONS  
3 FAM 681.1 APPLICABILITY**

b) Applicability is extended to designated U.S. Civil Service employees who are assigned abroad on temporary duty in accordance with Section 685.3. The employee's agency, department or bureau must have elected to provide such medical benefits and have entered into agreement with the Office of Medical Services of the Department of State.

c) The following agencies participate by formal agreement in the Medical and Health Program of the Department of State:

Agency for International Development (USAID), includes PASA.

<b>U.S. DEPARTMENT OF LABOR</b> <b>Employment and Training Administration</b> <b>Washington, D. C. 20210</b>	CLASSIFICATION
	UIS
	CORRESPONDENCE SYMBOL
	TEUPDI
	ISSUE DATE
	August 3, 1999
RESCISSIONS	EXPIRATION DATE
None	Continuing

**DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 41-99**

**TO : ALL STATE EMPLOYMENT SECURITY AGENCIES**

**FROM : GRACE A. KILBANE**  
**Director**  
**Unemployment Insurance Service**

**SUBJECT : Unemployment Compensation for Federal Employees (UCFE) Program Coverage for Individuals Paid by Federal Agencies on a Contract or Fee Basis**

- Purpose.** To provide revised guidance to State Employment Security Agencies (SESAs) regarding the UCFE program coverage of individuals paid by Federal agencies on a contract or fee basis.
- References.** 5 U.S.C. 8501(1); 5 CFR 831.307; 20 CFR Part 609; and ET Handbook No. 391.
- Background.** The Secretary of Labor has the responsibility for determining if an individual performs "Federal service" as defined at 5 U.S.C. 8501(1) for UCFE program eligibility purposes. This responsibility was delegated to the Assistant Secretary for Manpower (now the Assistant Secretary for Employment and Training) in April 1975, and was redelegated to the Director of the Unemployment Insurance Service in February 1992, (57 FR 13760, April 17, 1992).

Since 1954, the Department of Labor (the Department) has issued UCFE program coverage interpretations (rulings) upon request from the SESAs and Federal agencies. These coverage rulings determine whether any of the exclusions from "Federal service" at 5 U.S.C. 8501(1) apply to a particular individual or group. In the last ten years, a majority of these requests have dealt with individuals paid by Federal agencies on a contract or fee basis.

In issuing its determination regarding whether individuals paid on a contract or fee basis by Federal agencies perform "Federal service," the Department takes into consideration contracts of service, and other indicia of the individual's employment or self-employment. After examining such

pertinent materials, the Department first determines if the service being performed by the individual(s) paid on a contract or fee basis by a Federal agency is service performed &quot;in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, . . ." and, therefore, included under 5 U.S.C. 8501(1). If included under this section of the code, the Department then determines if any of the exclusions from "Federal service" at 5 U.S.C. 8501(1) are applicable, and in particular, the exclusion at paragraph (E). Paragraph (E) of 5 U.S.C. 8501 (1) excludes from coverage as "Federal service" any service performed--

by an individual excluded by regulations of the Office of Personnel Management from the operation of Subchapter III of chapter 83 [governing retirement coverage for Federal employees] of this title because he is paid on a contract or fee basis.

In 1991, the Department determined that the exclusion at paragraph (E) of 5 U.S.C. 8501(1) was not applicable for UCFE program purposes after January 8, 1988, when the relevant Office of Personnel Management (OPM) regulations were revised. The revised OPM regulations at 5 CFR 831.307 permitted a Federal employing agency to provide Federal retirement eligibility only if the employing Federal agency exercised an explicit statutory authority to appoint an individual into the civil service by contract, or if there was an intent by the employing Federal agency to appoint the individual into a position in which (s)he would have been subject to OPM regulations governing the retirement of Federal employees and a deposit has been paid in accordance with OPM regulations.

The Department recently received a request for a UCFE coverage ruling which involved the UCFE program eligibility of an individual hired as a contract guard with the United States Marshals Service. Based upon its 1991 decision, the Department determined that this individual did perform "Federal service" for UCFE program purposes. This determination was in large part based on the position contained in the preceding paragraph. After issuing this ruling, however, the Department, in consultation with OPM legal staff, reviewed its position concerning the exclusion at paragraph (E). As the result of these consultations, the Department is revising its position on the applicability of the exclusion at paragraph (E) of 5 U.S.C. 8501(1).

4. **Interpretation.** The Department has determined that paragraph (E) of 5 U.S.C. 8501(1) excludes from "Federal service" individuals paid by Federal agencies on a contract or fee basis if they are ineligible for Federal retirement under the revised OPM regulations at 5 CFR 831.307.

Consequently, an employing Federal agency, either by explicit statutory authority or by intent, must include an individual paid on a contract or fee basis in Federal retirement coverage in order for the individual to perform "Federal service" for UCFE program coverage purposes. Conversely, if the employing Federal agency, by explicit statute or intent, does not include the individual paid on a contract or fee basis in Federal retirement coverage, the OPM regulation at 5 CFR 831.307 effectively excludes the individual from retirement coverage and the exclusion at 5 U.S.C. 8501(1) (E) is also applicable.

5. **Effective Date.** The revised interpretation contained in this UIPL is effective for all determinations, redeterminations and decisions on appeal made on and after the date of this directive.

6. **Effect on Redeterminations, Decisions on Appeal, and Overpayments.**

- a. Redeterminations. Redeterminations of UCFE claims shall be undertaken by a State or

SESA solely under the authority in 20 CFR 609.6(c). The provisions of the applicable State's unemployment compensation (UC) law shall be the sole criterion in determining whether the State or SESA has the authority to make a redetermination of any claim affected by the interpretation contained in this UIPL.

- b. **Decisions on Appeal.** Appeals of UCFE claims affected by the interpretation contained in this UIPL shall be undertaken solely under the authority in 20 CFR 609.7. For this purpose, the State UC law includes judicial decisions of the courts of the State in comparable unemployment insurance cases as well as State statutory provisions, and thus is the same as "State law" which is relevant for conformity and compliance purposes under Title III of the Social Security Act.
- c. **Overpayments.** Any redetermination or decision on appeal affected by the interpretation contained in this UIPL that results in an overpayment of UCFE benefits shall be handled in accordance with 20 CFR 609.11.

7. **Action Required.** SESA Administrators are required to:

- a. Follow the interpretation contained in this UIPL on UCFE claims; and
- b. Furnish appropriate staff (including SESA appellate staff) with a copy of this UIPL for their future guidance on UCFE claims.

8. **Inquiries.** Direct inquiries to the appropriate Regional Office.