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The U.S. Agency for International Development's New Policies on Sexual Exploitation and Abuse by Aid Workers

Some Members of Congress are concerned about protecting foreign aid recipients from sexual exploitation and abuse (SEA) by aid workers. In 2018, media reports alleged that Oxfam International (Oxfam), a regular U.S. implementing partner, covered up an investigation into SEA by seven of its workers in the aftermath of the 2010 Haiti earthquake. (Oxfam has since taken responsibility and reportedly put in place internal measures to address the issue.) These allegations, in addition to similar reports from other nongovernmental organizations (NGOs), sparked concern among some policymakers and the U.S. Agency for International Development (USAID) that incidents of SEA by aid workers could be a recurring problem in the delivery of humanitarian and development assistance, and that the United States could be inadvertently funding organizations that were facing this issue. Congressional interest to date has focused on the need for greater accountability and SEA prevention measures.

Background

Prior to 2018, USAID primarily monitored allegations of SEA by aid workers through reporting requirements outlined in the grants and cooperative agreements the agency awarded to implementing partners (IPs). IPs were required to disclose complaints of human trafficking and/or procurement of commercial sex by IP personnel to USAID and to its Office of Inspector General (OIG). The OIG is mandated to conduct oversight of USAID programs and pursue cases of waste, fraud, and abuse, per the authority granted by the Inspector General Act of 1978. IPs were also required to adhere to USAID's Counter-Trafficking in Persons Policy and Child Safeguarding Standards. IPs were encouraged, but not required, to report sexual misconduct not already covered by the aforementioned requirements.

Following the Oxfam allegations, and in part because of its role in managing complaints about and potential investigations into SEA allegations, the OIG conducted an assessment of USAID's SEA-related reporting requirements. It identified weaknesses, including USAID's narrow definition of allegations that required reporting and the degree of discretion left to IPs to determine their credibility.

New USAID Policies and Activities

Informed by the OIG findings, USAID Administrator Mark Green launched the Action Alliance for Preventing Sexual Misconduct (AAPSM), an intra-agency effort with two goals: prevent SEA in USAID programming, and prevent and address sexual misconduct in USAID's workplace. The agency aimed to focus its SEA work on three main tenets:

- working globally to protect USAID's aid recipients and advance human dignity by preventing SEA;
- elevating the voice of survivors of SEA by working to put their needs, rights, and well-being at the forefront of USAID's work on preventing SEA; and
- reviewing and revising existing policies and procedures to strengthen accountability and compliance, in consultation with external partners and aid recipients.

Select components of USAID's ongoing and planned work are described below. Although interagency coordination also plays a role, it is not the focus of this report.

Review Draft Agency Policy. In September 2019, USAID issued a draft *Protection from Sexual Exploitation and Abuse (PSEA) Policy*. It includes a definition of SEA and objectives and principles that USAID staff would be expected to follow when overseeing USAID-funded programs. The draft policy also lists several elements USAID may add to its awards with IPs, which would build upon existing SEA-related provisions. In June 2018, USAID added to development awards some SEA-related provisions that had previously only been included in humanitarian awards. That change requires NGOs and contractors to ensure that employee codes of conduct are consistent with Section 3 of the U.N. Secretary General's Bulletin on Special Measures for Protection from SEA, which identifies many forms of SEA that may be grounds for disciplinary measures and eventual dismissal. USAID is in the process of finalizing the *PSEA Policy* and developing an IP toolkit and additional guidance for USAID field staff.

Collaborate with Implementing Partners. USAID reports that it is collaborating with IPs to shape new SEA-related policies and procedures. In addition to releasing the draft *PSEA Policy* for public comment, the agency completed in-person consultations with IPs on the draft. In early 2020, USAID also plans to convene a workshop with its IPs (as well as other international aid donors) to address SEA-related issues, including how parties can help prevent the hiring of perpetrators of abuse within the aid community.

Participate in International Fora and Standardize Policy. Other international aid donors with whom USAID regularly works—mainly G7 countries and the European Union (EU)—have also pursued new SEA policies since 2018. However, policies and procedures vary by country, which can lead to inconsistencies in awards and confusion among IPs. This is most pronounced in donor agreements with multilateral institutions (e.g., U.N. agencies or the World Bank), which are negotiated and established on a

country-by-country basis. USAID has indicated that having common language on SEA in agreements with multilateral institutions is a goal.

In addition, USAID has participated in several international coordination efforts addressing SEA. For example, USAID endorsed the *G7 Development Ministerial's Whistler Declaration on Protection from Sexual Exploitation and Abuse in International Assistance*, which includes a commitment to a "zero tolerance" approach to SEA, and made related commitments arising from a UK-hosted SEA conference. USAID is exploring how it will engage on SEA in future fora, including potentially the 2020 Organization for Economic Cooperation and Development's Development Assistance Committee *Tidewater Meeting* and the U.S.-hosted G7 Conference. USAID plans to continue its efforts with donors and multilateral organizations through ongoing quarterly technical discussions.

Issues for Congress

Congressional interest in U.S. efforts to address SEA by aid workers has been demonstrated through, for example, reporting requirements in annual State, Foreign Operations, and Related Programs (SFOPS) appropriations laws for FY2019 and FY2020. Measures require a joint report from the Department of State and USAID "detailing allegations of, and steps taken to prevent and respond to, sexual exploitation and abuse committed by IPs of foreign assistance programs supported by funds appropriated for the Department of State and USAID." (The report was submitted to Congress on January 21, 2020.) When debating ongoing SEA-related reforms, Members of Congress may consider several key issues.

Accountability for Victims of SEA

Some policymakers have raised concerns about holding perpetrators accountable for SEA. Broadly, USAID and its OIG can take action against those it finds guilty of waste, fraud, and/or abuse. USAID, for example, may choose to terminate an award early or recover funds that it determines were used inappropriately. As a law enforcement entity, OIG is able to arrest individuals and seek and execute warrants, among other capabilities. However, these functions have limits. Foreign nationals hired by foreign entities (e.g., NGOs or multilateral organizations), for example, fall outside the OIG's jurisdiction and cannot be pursued. Privacy protections can also be an obstacle to pursuing an individual alleged to have committed SEA. The EU's General Data Protection Regulation, for example, prohibits the sharing of personal data outside the EU and European Economic Area. As such, if the alleged perpetrator is European or a member of a European entity, the OIG and USAID are not entitled to their personal information. Congress could examine actions USAID and OIG might take within these legal limitations to provide accountability to SEA survivors.

Oversight of USAID Processes

Congress may increase its oversight of USAID's processes to evaluate and respond to SEA cases. At present, while the OIG in certain circumstances may directly investigate SEA allegations, its focus is on ensuring timely and sufficient

reporting by IPs. As appropriate, the OIG may transmit information on SEA reports to the relevant USAID office (i.e., the USAID officer managing the award or USAID's Office of Compliance) for consideration of further administrative action. Once a case is referred, though, it is unclear whether USAID has a standard procedure for evaluating that case and determining a course of action. Recognizing these concerns, the OIG has initiated an audit that seeks to "(1) determine to what extent USAID has taken action to prevent and detect sexual exploitation and abuse; and (2) assess USAID's process for responding to allegations of sexual exploitation and abuse." The audit is expected to be completed by the end of 2020.

Funding and Implementation of Reforms

At the same time USAID is pursuing the aforementioned policy reforms and procedural changes, the Administration has repeatedly requested cuts to the agency's operating expenses ranging from around 7% to approximately 17%. To date, Congress has not accepted these proposals. Should the Administration again propose cuts, Congress may seek greater understanding of their potential effect, if any, on the implementation of the new *PSEA Policy*. The Administration has also proposed budget cuts to the OIG operating budget. The OIG has found that it has been well equipped thus far to manage the case intake because, while the number of SEA-related reports has risen, most disclosures have not required independent OIG investigations. (Of the 32 SEA allegations received by OIG in FY2019, the OIG pursued three investigations and referred 12 cases to the Agency for consideration of further action. As of publishing, the remaining 17 have not received an investigative determination. Comparable data from prior years are not available.) However, the proposed funding cuts have raised questions about how the OIG would allocate its resources at reduced funding levels while balancing increased SEA case intake with oversight of other waste, fraud, and abuse cases.

U.S. Relationship with Implementing Partners

Many policymakers and observers have expressed concern that some IPs lack sufficient safeguards and policies to address SEA by aid workers. USAID and the OIG are working with IPs to assess current capabilities in preventing SEA, identify weaknesses in process, and build their capacity to handle SEA cases. For example, the OIG hosted more than 100 NGOs and contractors at an Oversight Roundtable in July, 2019 covering best practices on SEA investigations. While IPs have generally been receptive to USAID's new policies, their biggest criticism remains that USAID needs to provide more clarity in definitions, training, and other written materials in order for them to be successful in preventing and responding to SEA. Further, many IPs in the field have expressed their desire for USAID to translate its materials so they are accessible to all audiences, not just those who speak English.

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