

FIELD VIEWS ON THE NEW FORMAT
FOR LOAN AND GRANT PROJECT AGREEMENTS

" . . . we can put into effect, and adapt as required, any reasonable documentation system; however, what we do find troublesome is a continuing proclivity with the Agency to initiate new and different systems, often at a time when the old ones are just beginning to be accepted by USAID and host country officials."

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I. Introduction and Executive Summary

A. Introduction

Early in 1976, as part of AID's Project Budgeting, Accounting, and Reporting (PBAR) effort, modifications were made in project assistance procedures, including changes in the project agreements used to obligate funds. Initially, a unified project agreement was proposed to permit loans, grants, technical assistance and capital assistance to be intermixed. The new project agreement was intended as the central instrument to define reciprocal responsibilities and commitments, including project implementation and evaluation responsibilities.

It was decided in September 1976 to use separate project agreements for grant-financed, loan-financed, mixed-financed, and limited scope agreements (for small and simple technical services or participant training). The PROAG formerly used to obligate grant-financed projects was to be phased out after October 1976 and replaced with new agreements using language and procedures patterned after AID's existing loan agreements.

As part of Administrator Gilligan's concern with trying to streamline AID procedures to do a better job of carrying out programs with fewer people, OAS was requested to see if the new formats were working well, or whether it might be more efficient to consider returning to something like the old dual system for grants and loans.

As mentioned above, the new project agreements were to be used for all grants and loans authorized after October 1, 1976, with full conversion to the new format to take place after October 1977. The primary purpose of the new agreements was to "better preplan (sic) all assistance, and to manage more tightly projects during implementation."

The new grant and loan agreements were incorporated into Chapter 9 of Handbook 3. The two additional agreements for projects funded by both loan and grant, and the simplified "limited scope" agreement have not yet been incorporated into the Handbook, although some use is being made of both on a trial basis in the field.

In November 1978, OAS sent a simple questionnaire to 40 USAIDs asking about their experience with the new formats and suggestions for improvements. Responses have been received from 29 field posts. Since we do not anticipate that additional responses, which may have been delayed because of priority given to CDSS preparation, will add significant new information, OAS is issuing its report now.

B. Executive Summary

An old bureaucratic adage says, "If it ain't broke, don't fix it." We have concluded that the new project agreement system "ain't broke." The two new agreements which are being used for loan and grant financed projects are working well, after some initial difficulties by both USAIDs and Host Countries in adjusting to the new format. Opinion is almost unanimous that we should not return to the earlier formats and that no significant changes should be made at this time, although a number of suggestions were made for improvement and simplification of the agreements and annexes.

II. Recommendations

Since it ain't broke, we won't try to fix it. However, we urge PPC and the General Counsel's Office to tie up some loose ends by giving high priority to:

- (1) Finalizing and issuing the Limited Scope Project Agreement and Dual Funded Loan and Grant Agreement. Both are already being used on an ad hoc basis and many field Missions felt that both of these long promised new Agreements should prove useful. All that is lacking is issuance of the Agreements and inclusion of the texts and appropriate guidance in Handbook 3;
- (2) Developing appropriate guidance on use of the Project Implementation Letter (PIL). Guidance on the uses of the PIL contained in the latest proposed revision of Handbook 3 is extremely brief. In particular, it does not contain guidance on situations requiring Host Country countersignature and situations when PILs may be issued unilaterally by the USAID;
- (3) Changing the Handbook provision that "exceptions from model (agreement) formats may be authorized by the responsible Assistant Administrator, in consultation with Agency legal staff." We believe that this authority should be given to Mission Directors and AID Representatives after appropriate consultation with Regional Legal Advisors.

III. Summary Responses to the Questionnaire

1. Has your Mission been using the new format for all loan and grant agreements signed after October 1, 1977? In those cases in which you have not used it, what have been the reasons?

In all cases the USAIDs have made the transition from the old formats to the new agreements for new projects. In a few cases USAIDs have continued to use the old format for on-going projects, but almost all USAIDs will have made the transition to the new format for all agreements before the end of FY 1979.

Some USAIDs reported difficulty in making the change-over in format for continuing projects, as indicated by the following observation:

" . . . for grants originally signed under the old ProAg format, the change to the new format, in certain instances, has been cumbersome, in that the wording of the new Project Agreement does not allow for smooth transition from the old format For example, the wording in Sections 2.2 and 3.1 of the Project Grant Agreement simply doesn't fit. Also, a provision must be added explaining that the Project was previously funded pursuant to old PROAG and is now being funded under the new format Frankly, grants originally signed under the old PROAG format should have been continued with that format."

Since a complete transition will be made to the new format by all USAIDs by the end of FY 1979, no recommendation is being made by OAS for appropriate language to ease this transition.

2. What has been the response of the key ministries of Host Countries with which you negotiate agreements? Have they welcomed the more uniform format, or have they had difficulties in adjusting to this change in AID's paperwork requirements? If they originally had problems accepting the new agreements, have they adjusted to them now? Do you think the new grant agreements have made the Host Country more aware of their responsibilities under the agreements? Has it caused an increased workload for the ost ountry?

The reaction of Host Country ministries varied from highly favorable to some initial resistance. In most cases, once the first one or two agreements had been negotiated additional agreements caused few problems. One unusually enthusiastic USAID commented:

"Host Country response to the new forms has been very favorable. No real objections have been raised. Of course, the change did make the first few negotiations after introduction of the new forms more complex than usual - but that is to be expected whenever new forms of agreements are introduced."

Those Host Country officials who had considerable experience working with AID loan documents had little or no problems with the new format, while those who were accustomed to the grant PROAG were more resistant. This was particularly true in some African countries which were accustomed only to grant financing. One African USAID stated that Host Country Officials pointed out:

". . . the document is rather voluminous when one considers that the funds involved are Grant funds, plus the fact that the amount of AID given by the U.S. for various projects (is relatively small) when viewed in the over-all context of foreign Grant assistance currently being received by . Further, apparently other donors (particularly the Nordic Countries) give large amounts of AID with very little paperwork involved in the bi-lateral agreements."

USAIDs were divided on whether or not the new grant agreements have made the Host Country more aware of their responsibilities, with most USAIDs expressing the belief that the new format will eventually have this result. It was widely felt that the new format has at least made the Host Country focus more on its life-of-project responsibilities and forced it to review its commitments in more detail. One USAID observed:

". . . We have not seen any evidence thus far that the new form of grant agreement has made the Host Country more aware of its responsibilities. On the other hand, if detailed covenants and conditions precedent that must be met before funds are disbursed are built into a grant agreement as is permissible under the new guidance, the Host Country is bound to become more aware -- over time -- of its responsibilities - or if not, at least aware of the fact that it is not getting its money because certain actions are not being taken on time by certain of its officials."

Other USAIDs emphasized that too much importance shouldn't be ascribed to changes in format:

"Indeed, the assumption that a simple change in format could have a significant impact upon project implementation and performance is debatable. In essence, project success depends first on the capacity of the implementing institution, second on design, and third on USAID support. Issues of format do not belong in the same league as those three."

Finally, many of the USAIDs felt that the new format represents an increase in workload for the USAID, but not necessarily for the Host Country once the familiarization process had been completed. As one USAID put it:

"We doubt that use of the new forms has increased the Host Country's workload; in fact, a case to the contrary could be made because instead of having to negotiate a new PROAG from scratch each year for grant projects, incremental funds are added by simple amendment. Of course, the new agreement may result in an increased implementation workload for the Host Country - depending on what substantive content is put into the agreement."

3. Basically, do you think the new agreements represent an improvement over the old agreements? On the loan side? On the grant side?

Most missions felt that the new agreement represented an improvement, particularly for grants. The advantages of the new format were well summarized by this USAID:

"We think that the new agreements represent a decided improvement over the old practice. A key problem with the old grant PROAG was that following the face sheet, everything was lumped together in an annex, and it was often impossible to tell where the narrative and history ended and where the obligations and commitments of the grantee began. The new agreement with the dichotomy between CPs and covenants which are brought into the main body of the agreement and the general project description which is contained in an annex which can be changed without the need for a formal amendment of the agreement is a much more orderly way of doing business."

"The new grant format is flexible enough to be usable for both complex and simple projects. For the former, CPs, covenants and a detailed description can be added; for the latter, without these elements, the main body of the agreement collapses down to 4 single-spaced typewritten pages."

"A second problem with the old PROAG was that there was no umbrella, multi-year agreement as there is now; annual, detailed PROAGs had to be negotiated. Thirdly, all PIOs had to accompany the PROAG unless a waiver was signed (or unless the expedient was adopted of showing procurements as "other costs"). The new system is preferable. Procurements do not have to be initiated at the time the agreement is signed but can be handled later on through conditions precedent or simply as delayed procurement."

The new format is basically an adaptation of the former Loan Agreement, but most missions felt the changes made in the loan agreement also were improvements.

"On the loan side, the changes are not that radical, but still improvements were made. First, most of the boilerplate clauses were dropped, shortened - or were moved into a standard provisions annex. The main body of the agreement is thus less cumbersome than it was. Secondly, the detailed project description annex, with a life-of-project financial plan, is a welcome addition for loan agreements. In the old practice, surprisingly, few details about the project were included in the agreement; the description of project annex seldom exceeded a few paragraphs. There was the anomaly of a very complete loan project paper, very few of the details of which actually found their way into the agreement that was signed with the host country. This happily has changed."

Another mission pointed out additional advantages to the modified format:

"Predominant is the increased flexibility provided by moving much of the project details from the agreement itself into the more easily modified annexes. The new format also forces earlier attention to many implementation matters incorporating much of the material which previously was contained in implementation letters, especially implementation letter number 1, into the annexes to the agreement."

Finally, the advantages of uniformity were highlighted:

"The improvement we see is that the format is substantially uniform for grants, loans, and grant/loan .

projects. This makes it simpler for A.I.D. and Host Country personnel to become familiar with the format and clarifies the unity of grant/loan projects."

4. Among other things, the stated purpose of the new agreements was to "better preplan (sic) all assistance and to manage projects more tightly during implementation." Have these objectives been achieved? If so, can you cite examples?

Opinion was very evenly divided among those who felt that planning and management were improved, those who felt it was the same or worse than under the old agreements, and those who felt it was too early to tell. Many missions emphasized that planning should be a collaborative process beginning with the project identification stage, and that the obligating document itself is not particularly important in the process, as indicated by the following observation:

"It is not evident to date that the new agreement formats have had any significant impact on project preplanning or management during the course of implementation. For that matter, it is unclear why changes in format should have been expected to result in those kinds of improvement. There is the question of form versus substance. If the operational imperative is to streamline procedures so as to undertake larger programs with fewer people, a first step is to identify the bottlenecks that restrict a more streamlined overall process. Heightened efficiency is more a function of implementation actions (or inactions) than pre-implementation documentation."

Others pointed to the existence of Conditions Precedent as a mechanism for tightening up project implementation:

"This is true on the grant side particularly where before you seldom had CPs in grant agreements to meet by a certain date; invariably you do now. Under the old pre-printed grant agreement, you normally would have a statement in the narrative (not a CP), that would say, as an example, 'the Government would provide an implementation plan,'; under the new agreement, it says the Government will do so within so many days. Since it is a CP, you make sure the Government does it, under the old system, such requirements might likely slip or be forgotten by a busy project manager."

One potentially negative aspect of the particular format of the grant agreement was highlighted by another USAID which noted:

". . . with respect to the grants, rather than increasing host government awareness of its responsibilities, the new format may be having the opposite effect. This is because the actual delineation of project activities is relegated to Annex I; while annexes may constitute integral parts of a grant agreement, this host government tends to consider as more strictly binding those provisions contained in the actual body of an agreement."

5. Are you now using Project Implementation Letters in connection with grant assistance? Has this proved to be a helpful innovation?

Only two of the twenty-eight respondents indicated that they were not using project implementation letters (PILS). Virtually all of the missions stated that the PIL system is much more orderly and preferable to the former practice of amending grant project agreements. As one mission commented:

"All mission project managers had high praise for the Project Implementation Letter system and recommended that it be continued. The PIL provides a relatively simple but still official means of communication to make refinements or modifications in annex 1 and/or to provide guidance and information to the Host Country. Where adjustments or refinements in the annex are necessary, the PIL permits this to be done expeditiously without having to resort to the lengthier and more complicated step of amending the agreement itself."

However, several missions pointed out there is some confusion about appropriate uses of the PIL since Handbook 3 does not presently contain a section providing guidance on this subject. (This section of the Handbook is currently in draft.) Among questions which should be addressed is under what conditions Host Country countersignature should be required.

6. What effect have the new agreements had on mission organization or staffing requirements? e.g., have you found that you have needed to rely more upon Regional Legal Advisors, and Capital Development Officers? Has the role or status of the Program Officer been changed?

Virtually all of the respondents indicated that the new agreements required greater use of Regional Legal Officers to draft or review agreements and/or to approve meeting conditions precedent. Many USAIDs also commented that the new format led to greater use of Capital Development Officers, since the new agreement is very similar in form and procedures to the former loan agreement.

One USAID placed this increased role for staff offices in a broader perspective:

"One view held by a number of project officers is that since the new formats were initiated, the Program, Capital Development, Controller, Contract and Legal functions have increased to the point where the distinction between staff and line is being lost. This viewpoint is reflective of a concern that staff offices are increasingly becoming the main sources of implementation action (or control).

"On the other hand, there is the view among a number of staff officers that the real burden/restriction placed upon project officers is one of basically becoming familiar with a new documentation procedure and not one of limitation of authority.

"On balance, what needs to be considered is whether this possible modification to the project officer's role has been because of the substantial alteration of A.I.D.'s grant obligating document, or whether this might not be due to substantially deeper changes in the way A.I.D. conducts its business."

Several Missions also reported that technicians, who were familiar with the simpler and less legalistic PROAG, often were less enthusiastic about the new formats than those in staff positions.

Although many USAIDs stated the new agreements did not effect the role of the Program Officer, one USAID noted that the new agreements might be still another reason for combining Program and Capital Development offices:

"The introduction of the new agreements was yet another step, a sensible one we believe, toward recognition by the Agency that past distinctions between Program and Capital Development officers are really somewhat artificial. There is probably at least a 75% inter-changeability."

This comment re-enforces earlier recommendations of OAS, based on reviews of programs in Africa and Salvador, that the distinction between Program and Capital Development Officers is rapidly blurring, yet the existence of distinct AOSC categories often serves as a barrier to filling vacant positions.

7. Have the new agreements been translated (where necessary) into the language of the Host Country? If so, by whom? Are the translations satisfactory?

In every case in which the USAID felt a translation was appropriate, it has been accomplished in an acceptable version. There seemed to be a lack of uniformity, however; with most French translations provided by AID/W and most Spanish translations provided or modified by the USAID.

One USAID emphasized:

"Additional work is called for, however, as many references in Project Agreement, e.g., Handbook II, Contracting Procedures, have not yet been translated and are a source of constant inquiry and irritation. Every effort should be made by AID/W to translate as soon as possible all pertinent documents into major languages."

8. Has the requirement to use the new agreements delayed the obligation of funds significantly? If so, please cite examples.

Several USAIDs noted some delay in obligations during the "break in" period of the new agreement because of lack of understanding of some provisions or increased Host Country legal reviews in both operating ministries and approving ministries, such as Plan or Finance. However, almost 80% of respondents noted no significant delays.

One mission placed any delays in obligation in context by noting:

"The new format for grants coupled with more in-depth analysis probably has lengthened the period of project preparation thereby delaying obligation of funds initially. I suspect, however, implementation will be improved and over the life of projects disbursements will proceed at a faster pace."

9. Have you used the new draft Limited Scope Project Agreement for small technical assistance projects? Was it useful? If not, do you feel a need for a simpler project agreement for smaller TA projects? Have you felt a need for the proposed Loan and Grant Agreement for projects which are both loan and grant funded?

As indicated above, the Limited Scope Project Agreement has not yet been incorporated into Handbook #3. However, Regional Legal Officers servicing at least five of the respondents are using the Limited Scope agreement. There was general agreement either that this simplified document is or would be extremely helpful.

Similarly, some USAIDs are already using the proposed Loan and Grant agreement for jointly-funded projects, while several USAIDs indicated that they were awaiting AID/W approval of this new agreement form.

In view of these attitudes and the fact that one USAID was advised by AID/W that the Limited Scope Agreement couldn't be used because it was only in draft (apparently at a time when other USAIDs were using the agreement) we urge the Agency to give rapid final approval and distribution to the Limited Scope Agreement and Loan and Grant Agreement.

10. Would you like to see any changes in the agreements? If so, what specific changes would you suggest?

The following suggested changes in the agreements should be considered in the context of overwhelming support for continued use of the new agreements and opposition to any major revision which would make necessary a new "break-in" period.

A few of the missions objected to excessively legalistic patronizing, or unnecessary language which they felt irritated Host Country personnel. For example, use of the phrase "free world" countries offends some non-aligned nations. As one mission put it:

"The standard provisions annex is the worst feature of either system. It badly needs to be simplified, humanized and translated from gobbledygook into English. At the same time its peremptory tone should be altered. All of our agreements depend for their effect on goodwill and cooperation. They cannot be 'enforced' short of a political rupture that AID is not entitled to initiate, and their language should be couched accordingly."

Several missions called for greater flexibility in permitting deviations in language. At present the Handbook requires that the appropriate Assistant Administrator authorize all wording changes in the Agreement. This provision, which may be honored more in the breach than in the observance, is not only an unnecessary burden for Assistant Administrators; but also undermines a USAID's ability to negotiate with the Host Country. We therefore recommend that AID/W amend the Handbook to permit Mission Directors and AID Representatives to modify language of Agreements after appropriate consultation with Regional Legal Advisors.

It is recognized that deviations in language in the standard provisions annex may cause greater problems. In fact, one USAID suggested that the standard provision annexes be printed and bound in Washington in English and major foreign languages:

"If these are truly AID's universally applied general conditions, they should emanate from Washington and appear about as official-looking as the IBRD General Conditions which are printed and bound. The less official the document looks, the more a Host Country may be tempted to tamper with the sacred language."

Several Missions also suggested a reversal of the position of the loan or grant Agreement and Annex I, which contains the substantive details of the projects;

". . . the substantive description appears to be in a subordinate position. The attention of host government officials is drawn instead to the boilerplate, which gives rise to quibbling over minutiae. A reversal of the relative position of these two components of the agreement would help to focus attention on the technical details and, therefore, better insure attainment of the objectives of the switch to the new format, viz, better pre-planning and tighter management."

A number of additional suggestions for changes of language clarification were received from several missions. We will make these comments available to GC and PPC for consideration in making changes to Handbook 3, which is presently under revision.

11. Even if you and your staff were originally dissatisfied with the new agreements, would you now recommend terminating the current project agreement system, modifying it or returning to something like the old PROAG formats? If so, how and why?

Notwithstanding the numerous criticisms or suggestions for improvement of the new Agreements, there was a very strong consensus (25 out of 29 respondents) that the USAIDs do not wish to return to the former systems. Even two of the four which wished to return to the former system suggested that Missions be given the option of using either the old PROAG or the new Agreement.

It would appear that the desire to continue with the present system is based partially on the fact that, after initial periods

of adjustment, both USAIDs and Host Countries have learned to live with the new formats and that they are substantively as good as or better than the previous agreements.

However, a large part of the desire to retain the new Agreements and make only major modifications is based on a desire to avoid change for change's sake. This attitude was well summarized by the Mission which said

". . . The new agreements are by no means perfect. But the language of almost any document can be improved - if someone wants to try hard enough. In our view, the marginal utility of changing the current project agreement is almost certain to be outweighed by the added burden on Mission staff and imposition on the host government in having to negotiate a whole new set of agreements. Also the host government is bound to think we're punchy if we adopt yet another project agreement system after this short interval. Please let well enough alone."