



Contractors Functioning as Timekeepers

A Mandatory Reference for ADS Chapter 626

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Overview

The Time and Attendance (T&A) functions break down into those that are inherently governmental and those that are not. Functions that are inherently governmental must be performed by a government employee or a Personal Services Contractor (PSC), while functions that are not inherently governmental may be performed by a government employee, a PSC, or a contractor. When a contractor performs T&A functions, the Privacy Act requires that the Agency apply the requirements of the Act to the contractor and its employees working on the contract.

POLICY

1. T&A functions that are inherently governmental include

- Approval of an employee's time card submission by the supervisor in whatever form the employee's time card takes, and
- Certification by the certifying official for payment of the T&A documentation in the form that is appropriate, e.g., the American Employee's Time and Attendance (AETA) summary report, etc.

2. The T&A data input function is not inherently governmental.

It is a mechanical process that can be performed by a government employee, including a PSC, or a contractor. It requires no decision-making function or certification that commits or obligates funds. A contractor employee may perform this function after the following conditions are met:

- (a) The relevant contractual documents include adequate safeguards (see paragraph 3 (a) below) concerning protection of information,
- (b) Rules of conduct are established for individuals performing the T&A function, and
- (c) Such individuals are instructed in the rules of conduct and the requirements of the Privacy Act. (See the Privacy Act, section 552a(e)(9))

3. Conditions under which contractor employees may perform T&A data entry.

(a) Adequate safeguards in contractual documents: Before a contractor employee may act as a timekeeper, the contract must include language that applies the Privacy Act to the contractor and its employees. The language must require them to protect the personal information to which they have access in accordance with the rules of conduct (mentioned in 2(b) above and 3(b) below). In addition to including the two applicable Federal Acquisition Regulations (FAR) clauses (52.224-1 Privacy Act Notification and 52.224-2 Privacy Act), the contract statement of work must also identify the system(s) of records and the operational work that the contractor is to perform. FAR Subpart 24.1, Protection of Individual Privacy, contains additional information for contract compliance with the Privacy Act.

Because accessing USAID's Privacy Act-protected data (such as time and attendance data) is a contract task that requires security provisions, these contracts must also comply with the requirements of ADS 545 Information Systems Security, including its Mandatory Internal Reference, Contract Clause Guide for Unclassified Information System Security Systems and Services see <http://www.usaid.gov/policy/ads/500/545mah.pdf>. The Contract Clause Guide contains detailed procedures and contract clauses to ensure the protection of USAID's information systems (IS) and effectively requires that when a contractor employee performs T&A data entry, the employee must sign AID Form 545-5, U.S. Agency for International Development Sensitive Data Nondisclosure Agreement see <http://inside.usaid.gov/forms/a545-5.doc> (this Agreement is more fully discussed as part of the Privacy Act requirements below).

(b) Contractual Rules of Conduct: The Privacy Act rules of conduct requirement mentioned in paragraph 2(b) above is satisfied by the USAID Sensitive Data Nondisclosure Agreement provided in AID Form 545-5. As stated in 3(a) above, any individual accessing an automated or manual USAID Information System (IS) must sign this Agreement.

(c) Privacy Training: The Privacy Act instruction requirement mentioned in paragraph 2(c) can be met when a person designated by the Contracting Officer or by the company for which the time-keeper works

a. Provides a copy of the Sensitive Data Nondisclosure Agreement (AID Form 545-5) and the Privacy Act of 1974 to the time-keeper (see <http://www.usdoj.gov/04foia/privstat.htm>);

b. Reviews each paragraph of AID Form 545-5 with the time-keeper;

c. Asks the time-keeper if he or she has any questions;

d. Answers those questions which he or she is able to answer;

e. Obtains answers to any remaining questions and provides them to the time-keeper; and

f. Obtains the time-keeper's signature on the agreement.

4. Contracts awarded by another agency on USAID's behalf. Another agency may award a contract involving T&A data input on behalf of USAID, such as through an interagency agreement (IAA) pursuant to ADS 306, Interagency Agreements (such agreements include but are not limited to Participating Agency Service Agreements [PASAs] and Cooperating Agency Support Units [CASUs]). When this is the case, the requiring office must request that the Agreement Officer responsible for entering into the

IAA include a requirement that the Participating Agency include the above Privacy Act requirements in any contracts for such services it awards for USAID.

The statement of work for the IAA must clearly describe the task, identify the system of records, identify that the task is subject to the Privacy Act, and require the Participating Agency to incorporate the requirements of FAR 24.1 into any subsequent contracts it awards on behalf of USAID. In addition, the IAA must include language substantially as follows (if the IAA is a PASA, this language would be included in Section H "Special Provisions" of the PASA format in ADS 306. It may be adapted as necessary to include in the appropriate place in other types of IAAs):

"One of the services to be provided in the Statement of Work for this Agreement is time and attendance (T&A) data entry for USAID employees. T&A data is sensitive data and access to it requires compliance with the Privacy Act of 1974 (5 U.S.C. 552a.) Individuals performing this function are subject to the Act and must maintain the same safeguards for the records that the Agency would maintain (see USAID Automated Directives System (ADS) Chapter 508 Privacy Act of 1974; ADS Chapter 545, Information Systems Security; and 22 CFR 215, Regulations for Implementation of Privacy Act of 1974).

Individuals must also comply with the same access and disclosure provisions (including but not limited to ADS Chapters 545, 565, 566, and 567), whether they are employees of the Participating Agency or employees of contractors of the Participating Agency approved pursuant to Clause 2, "Contracting under this Agreement," of Annex C, the Standard Provisions of this agreement. Any individual performing services that are subject to compliance with the Privacy Act must sign AID form 545-5, U.S. Agency for International Development Sensitive Data Nondisclosure Agreement (a mandatory internal reference to ADS 545).

Participating Agency employees must comply with the Privacy Act by virtue of their Federal employment. The Participating Agency must ensure that any contract it awards to provide T&A data entry for USAID incorporates the Privacy Act requirements in Federal Acquisition Regulation Subpart 24.1 and the internal USAID Privacy Act and information system security requirements stated above."

Mandatory External References

1. OMB Circular A-76, Attachment A, Section B. Categorizing Activities Performed By Government Personnel As Inherently Governmental or Commercial
2. Federal Acquisition Regulation (48 CFR Chapter 1), Subpart 24.1
3. Maintaining Effective Control Over Employees Time and Attendance Reporting, GAO-03-352G, January 2003
4. 22 CFR 215, Regulations for Implementation of Privacy Act of 1974

5. The Privacy Act of 1974 (5 U.S.C. 552a)
Mandatory Internal References

1. ADS 306, Interagency Agreements
2. ADS 508, Privacy Act of 1974
3. ADS 545, Information Systems Security
4. AID form 545-5, U.S. Agency for International Development Sensitive Data Nondisclosure Agreement
5. ADS 565, Physical Security Programs (Domestic)
6. ADS 566, U.S. Direct-Hire and PASA/RSSA Personnel Security Program
7. ADS 567, Classified Contracts, Grants, Cooperative Agreements, and Contractor/Recipient Personnel Security

For more information about the Privacy Act of 1974 and other privacy topics in USAID, visit PrivacyInfo@USAID on the intranet at <http://inside.usaid.gov/privacy/>.