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# ADS Chapter 158

## Document Retention and Collection Orders

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ADS 158 – Document Retention and Collection Orders  
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## ADS 158 – Document Retention and Collection Orders

### 158.1 OVERVIEW

Effective Date: 12/05/2023

This chapter establishes internal procedures for the issuance and implementation of document retention and/or collection orders. Nothing in this chapter is intended to create any substantive or procedural rights, privileges, or benefits in any administrative, civil, or criminal matter by any person or party. This chapter applies to all workforce members as defined in the [ADS Glossary](#).

Document retention orders require that certain hard copy materials and/or electronically stored information (as defined in section 158.6) be preserved due to litigation, audit, investigative, or other needs. Document retention orders include litigation holds issued by the Office of the General Counsel (GC). Workforce members must comply with document collection orders that require that such materials be collected and provided to GC.

This chapter does not apply to the document retention and collection process managed by the Office of Civil Rights (OCR) with respect to Equal Employment Opportunity claims, as set forth in [ADS Chapter 110, Equal Employment Opportunity Program](#). OCR may separately issue document retention orders directly to individuals. OCR works through GC to submit a request for a document retention or litigation hold order that is sent to the Bureau for Management, Office of the Chief Information Officer.

### 158.2 PRIMARY RESPONSIBILITIES

Effective Date: 12/05/2023

- a. The **Assistant General Counsel for Litigation and Enforcement (GC/LE)** and the **Assistant General Counsel for Ethics and Administration (GC/EA)**, or their designees, are responsible for issuing and overseeing the implementation of document retention and collection orders.
- b. The **Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD)** and the **Bureau for Management, Office of the Chief Information Officer, Information Assurance Division (M/CIO/IA)** are responsible for facilitating the implementation of such orders, which may involve suspending document disposition procedures, preserving hard copy materials and electronically stored information, and collecting and providing such materials to GC.
- c. **Bureaus/Independent Offices/Missions (B/IO/Ms) and USAID Workforce members** are responsible for compliance with document retention and collection orders, including preserving materials and providing them to GC pursuant to any document retention and/or collection orders issued. All workforce members are required to comply, regardless of hiring type or contracting mechanism, unless expressly informed otherwise in writing by GC. Workforce members must contact GC if they have

concerns about whether their hiring type or contracting mechanism may impede compliance with the document retention or collection order.

### 158.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

#### 158.3.1 Issuance and Contents of Document Retention and Collection Orders

Effective Date: 12/05/2023

GC is authorized to issue document retention and/or collection orders when it is in the best interest of the Agency. Examples of situations which might necessitate but do not necessarily require such orders include litigation or anticipated litigation, administrative proceedings, subpoenas, congressional actions, and audits and investigations. As the issuance of a retention or collection order can require the Agency to expend resources for an extended period of time, GC should issue collection and retention orders judiciously.

To issue a document retention and/or collection order, GC is responsible for sending written notice to M/MS/IRD, M/CIO/IA, relevant B/IO/Ms, and/or USAID workforce members, as appropriate. The order should provide a brief summary of the circumstances necessitating it and a description of the materials subject to retention and/or collection. The order should indicate:

- a. The types of materials that must be preserved or collected, which may include record, non-record, and other materials, such as hard copy and electronically stored information (as defined in section 158.6), reports, correspondence, notes, worksheets, drafts, spreadsheets, calendars, books, images, voicemail messages, video recordings, and the like;
- b. Applicable date restrictions limiting the scope of materials subject to preservation or collection based on when they were created or received;
- c. Applicable subject matter restrictions, such as materials relating to a particular subject matter or containing particular terms or keywords;
- d. Applicable custodian restrictions; and
- e. Contact information for people within GC who can answer questions concerning the order.

#### 158.3.2 Implementation

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M/MS/IRD and M/CIO/IA must work with GC to facilitate the implementation of document retention and collection orders.

M/MS/IRD must provide information regarding regularly scheduled disposition procedures that could affect materials subject to an order, such as the disposition of

materials located at a Federal Records Center (FRC) or the transfer of materials to the National Archives and Records Administration (NARA). M/MS/IRD and M/CIO/IA must suspend such procedures if GC determines it is appropriate, seeking an extension of time to initiate destruction procedures under [36 CFR 1228.54](#), as necessary.

M/CIO/IA must analyze and provide information concerning the potential location of electronically stored information, which might include hard drives, back-up tapes, and the like, and preserve and collect materials from such locations if appropriate under the circumstances, as determined by GC.

Relevant B/IO/Ms and USAID workforce members must also work with GC, M/MS/IRD, and M/CIO/IA to preserve and collect materials in their possession pursuant to any document retention and/or collection orders issued. Such orders must supersede other disposition procedures, including those set forth in [ADS Chapter 502, The USAID Records Management Program](#).

At the request of GC staff, individuals must comply with requests to provide testimony, documentation, and/or other proof of compliance with the terms of the orders issued by GC described in this section.

### **158.3.3 Modification and Removal**

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GC may modify the terms of retention and collection orders once they have been issued and must remove orders when they are no longer necessary. To modify or remove an order, GC must give written notice to M/MS/IRD, M/CIO/IA, relevant B/IO/Ms, and/or USAID workforce members.

### **158.3.4 Penalties for Non-Compliance**

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USAID may be subject to judicial or other sanctions if it fails to comply with document retention and collection orders. Individual members of the workforce who fail to comply may suffer disciplinary or adverse action, as well as civil and/or criminal legal penalties.

## **158.4 MANDATORY REFERENCES**

### **158.4.1 External Mandatory References**

Effective Date: 04/07/2011

- a. [36 CFR 1228.54](#)
- b. [44 U.S.C. Chapter 3301](#)

### **158.4.2 Internal Mandatory References**

Effective Date: 12/05/2023

- a. [ADS 110, Equal Employment Opportunity Program](#)
- b. [ADS 502, The USAID Records Management Program](#)
- c. [ADS 508, Privacy Program](#)

**158.5**            **ADDITIONAL HELP**  
Effective Date: 04/07/2011

- a. [ADS 487saa, Table of Offenses and Penalties](#)

**158.6**            **DEFINITIONS**  
Effective Date: 12/05/2023

See the [ADS Glossary](#) for all ADS terms and definitions.

**Disposition**

The transfer, retirement, and/or disposal of records or non-record material.  
(**Chapter 158** and [502](#))

**Document Collection Order**

An order issued to M/MS/IRD, M/CIO, B/IO/Ms, and/or USAID workforce members with instructions regarding the collection and/or production of hard copy and/or electronically stored information to GC. (**Chapter 158**)

**Document Retention Order**

An order issued to M/MS/IRD, M/CIO, B/IO/Ms, and/or USAID workforce members with instructions regarding the retention and preservation of hard copy and/or electronically stored information. Document retention orders include litigation holds. (**Chapter 158**)

**Electronically Stored Information (ESI)**

As defined in the Federal Rules of Civil Procedure Rule 34(a)(1). ESI includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations - stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. (**Chapter 158**)

**Non-record**

U.S. Government-owned informational materials excluded from legal definition of records; documentation/correspondence that does not document USAID's policies, procedures, practices or operations. Includes extra copies of documents kept only for convenience or reference, stocks of publications of processed documents, and library or museum materials intended solely for reference or exhibition. (**Chapter 158** and [502](#))

**Records**

All books, papers, maps, photographs, machine readable materials, electronic documents (e.g., emails) or other documentary materials, regardless of physical form or

characteristics that are made or received in connection with the transaction of the Agency's business. (**Chapters 158, [408](#), [502](#)**)

**Workforce**

All individuals working for or on behalf of the Agency, regardless of hiring or contracting mechanism, who have physical and/or logical access to USAID facilities and information systems. This includes but is not limited to: United States Direct-Hire employees, Personal Services Contractors, Fellows, Participating Agency Service Agreement, and contract personnel. (Note: Contractors are not normally subject to Agency policy and procedures as discussed in ADS 501.1. However, contract personnel are included here by virtue of the applicable clauses in the contract related to HSPD-12 and Information Security requirements). (**Chapters 158, [508](#), [547](#)**)

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