

Programs and Systems Audits

**AUDIT OF A.I.D.'S PROCEDURES
FOR PROCESSING PERSONAL PROPERTY
CLAIMS SUBMITTED BY EVACUEES
FROM LIBERIA AND SOMALIA**

Report No. 9-000-92-002
November 25, 1991



INSPECTOR
GENERAL
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

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for Processing Personal Property
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A.I.D.'s unprecedented actions in waiving the statutory limitation of \$40,000 per claim and in extending claims benefits to employees of its contractors and grantees in Liberia and Somalia were taken on the basis of questionable legal authority. Also, claims were paid which did not meet the legislative requirements for establishing their validity. These actions greatly increased A.I.D.'s costs and conferred benefits on A.I.D. recipients which were not available to other federal employees.

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D C 20523

ASSISTANT INSPECTOR GENERAL
FOR AUDIT

November 25, 1991

MEMORANDUM FOR AA/FA, Richard A. Ames

FROM: AIG/A, John P. Competello



SUBJECT: Audit of A.I.D.'s Procedures for Processing Personal Property Claims
Submitted by Evacuees from Liberia and Somalia

Enclosed are five copies of our audit report on Liberia and Somalia evacuee claims.

We have reviewed the Agency's comments on the draft report and included them as an Appendix to the final report. All of the report recommendations are considered unresolved. Further actions needed to close the report recommendations will depend, in large measure, upon the response to Recommendation No. 2. This recommendation calls for a request to the U.S. General Accounting Office for a formal opinion on whether A.I.D. acted within the scope of its authority and complied with applicable laws and regulations in processing the claims of its employees and those of its contractors and grantees in Liberia and Somalia. Please respond within 30 days, indicating any actions taken or planned to close the recommendations.

I appreciate the cooperation and courtesies extended to my staff during the audit.

EXECUTIVE SUMMARY

In June 1990, the Agency for International Development (A.I.D.) was forced to close its Mission to Liberia and to evacuate its employees due to unstable security conditions stemming from the eruption of civil war. In January 1991, the scenario was repeated in Somalia. Employees and their dependents left these posts, generally on short notice, leaving behind many of their personal effects. The disruptions were expected to be temporary and it was anticipated that the employees would be returning to their posts in about a month. These assessments were wrong and massive looting and destruction of U.S. property took place. (see pages 1 and 2)

As of June 30, 1991, A.I.D. had received 25 claims totaling about \$1.6 million for the loss and damage to employee property. A.I.D. had completed processing 22 of these claims at a cost of \$1.15 million. Normally, A.I.D.'s compensation in these cases would have been limited by the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to not more than \$40,000 per claim. However, A.I.D. took the unprecedented step of using authority granted to its Administrator under the Foreign Assistance Act of 1961, as amended, to waive the \$40,000 limitation. A.I.D. also waived its own regulations that limited the amounts payable on a category-of-item basis. As a result, 13 of 22, or 59 percent of the claims adjudicated at the time of audit, had been adjudicated above the \$40,000 limit. The settlements more than doubled the cost to the government in some cases and uniquely provided A.I.D. employees benefits not available to other U.S. Government employees. In addition, without any legal obligation to do so, A.I.D. agreed to pay the claims of employees of its contractors and grantees in Liberia and Somalia. The Inspector General undertook a detailed audit of the evacuee claims settlement process because of a concern that use of the waiver authority may not have been legally correct; and A.I.D. processing of the claims may not have complied with legislative requirements. (see pages 4 to 21)

The audit was done between June and August 1991 in accordance with generally accepted government auditing standards. The audit objectives are described on page 3. The scope and methodologies are described in Appendix I, page 27.

The audit concluded that use of the waiver authority granted A.I.D. under the Foreign Assistance Act of 1961, as amended, was not legally correct in these cases. The audit also

concluded that A.I.D. did not use a legitimate or credible system for processing its claims in a manner consistent with the requirements of the Military Personnel and Civilian Employees' Claims Act of 1964 and its own regulations. This Act, which is embraced by A.I.D. Handbook 23, applies only to military personnel and federal employees and requires before any claim is paid that (1) the claim be substantiated, (2) the head of the Agency determine that the items lost were reasonable or useful under the circumstances, and (3) there was no negligence on the part of the employee or an agent of the employee, (see pages 4 to 21).

The overall statutory limitation was waived because A.I.D. officials believed it was the fair thing to do for employees who had lost many of their possessions. While we understood the motivation for this decision, and did not find fault per se with management's desire to fairly compensate A.I.D. employees, we could find no basis in law for the actions taken to settle the claims in question. (see page 6)

This report makes certain recommendations directed at putting the claims settlement process in conformity with applicable laws and regulations. These recommendations call for revoking the A.I.D. administrative decisions to (1) waive the \$40,000 limitation, (2) waive the limits on individual categories of items, and (3) adjudicate the claims of employees of contractors and grantees. With respect to the preconditions for the payment of claims contained in the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, the report recommends that A.I.D. establish appropriate criteria for implementing the Act's provisions and that these criteria be applied to all claims settled and pending. Finally, because most claimants knew little beforehand about security conditions at their posts of assignment such as in Liberia and Somalia and little about the legislative provisions governing the payment of claims, the report recommends that A.I.D. establish and implement procedures that will ensure that employees are appropriately informed on such matters (see pages 5,11, and 12).

In its formal response to the report, A.I.D. management disagreed with the audit conclusions regarding the legal correctness of using Section 636 (b) authority to waive the \$40,000 per claim statutory limitation. The response stated that the A.I.D. Office of General Counsel continued to maintain the view that use of Section 636 (b) in these cases was clearly legal and within the intent of the legislation. (see Appendix III)

With respect to meeting the Military Personnel and Civilian Employees' Claims Act requirements for processing and paying claims, A.I.D. management again disagreed with the audit conclusions. Management acknowledged that "there appears to be an element of looseness and fuzziness in the A.I.D. regulations", but said it was convinced that the requirements of the law and A.I.D. regulations were met. (see Appendix III)

The management response contributed little to reconciling the problems addressed in this report. From the Office of Inspector General's perspective, we continued to disagree strongly with the use of Foreign Assistance authority to ignore other legitimate legislative requirements and with the inadequate processes used to evaluate and settle these claims. The Liberia and Somalia evacuee situation is important because use of the waiver authority represents a fundamental departure from the way A.I.D. has operated in the past, and consequently is precedent setting. In a world marked by outbursts of violence and more frequent evacuation of A.I.D. staffs from various posts, the issue of how employee claims are to be settled is certain to recur.

In view of the impasse that exists between the Office of Inspector General and A.I.D. management on this point, we revised the audit report recommendations to include a recommendation that A.I.D. request a formal Comptroller General decision on (1) use of the waiver authority, (2) payment of claims for employees of contractors and grantees, and (3) the administrative processes used to settle the Liberia and Somalia claims, as discussed in the text of this report. (see page 5)

The A.I.D. management comments are contained, along with our evaluation, at the end of each of the findings sections. The full text is included in the report as Appendix III.

Office of the Inspector General

Office of the Inspector General

November 25, 1991

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INTRODUCTION

Background

In June 1990 and January 1991, the Agency for International Development (A.I.D.) was forced to close its Missions in Liberia and Somalia due to violent fighting which occurred between government and rebel forces. The closures concluded a lengthy period of generally worsening conditions which also eventually culminated in the removal of the central governments in these countries.

In some cases, dependents and employees left within days of receiving orders to leave. Many other evacuees had a week or more to prepare for their departures. The evacuations were made in a fairly orderly fashion with employees usually departing aboard scheduled commercial air carriers. Based upon the claims filed, 13 employees were evacuated from Liberia and 13 employees, along with their dependents, were evacuated from Somalia. Most employees were able to carry only a limited amount of their effects with them upon departure. The prevailing opinion was that the disruptions would not be lengthy and that most people would be returning to post within a month or two. However, the possessions left behind were lost as a result of the looting and destruction that took place. According to Department of State accounts, about three months transpired between the time permission was granted to begin departure from Liberia and the time A.I.D. property reportedly was destroyed. There was about a one-month period in the case of Somalia.

Subsequently, employees filed claims for compensation of their losses. At June 30, 1991, A.I.D. had received 25 claims from its employees totaling \$1,637,343, an average of \$65,493 per claim. A.I.D. had completed adjudicating 22 of these claims in the amount of \$1,154,027, an average of \$52,456 per claim. Additional employee claims were expected, but no estimates of these claims were readily available. A.I.D. also agreed to pay for the losses suffered by the employees of its contractors and grantees in Liberia and Somalia; however, at the cutoff date for this audit, June 30, 1991, only one such claim had been submitted. A.I.D. eventually expected to receive a total of about thirteen claims. There is no way to estimate how much money will be involved in these claims.

The Military Personnel and Civilian Employees' Claims Act of 1964, as amended, (31.U.S.C.) Section 3721 (b) provides A.I.D. and other federal agencies the authority for settling employee claims. The Act limits the government's payments to \$40,000 per claim for the loss or damage of personal property. The Act requires that before any claim can be paid, the agency must determine that (1) the claim was substantiated, (2) possession of the property was reasonable or useful under the circumstances, and (3) that no part of the loss was caused by negligence on the part of the claimant or an agent of the employee. A.I.D. Handbook 23 regulations implement the Act's requirements and define the terms substantiation, reasonable or useful, and negligence. The regulations include further stipulations that limit reimbursements for specific categories of items to maximum allowable amounts. For example, compensation for computers and accessories is limited to \$3,000 under A.I.D. regulations.

A.I.D. management in 1990, and again in 1991, used the authority of Section 636 (b) of the Foreign Assistance Act of 1961, as amended, (22. U.S.C.) to waive the \$40,000 per claim limitation. Section 636 (b) essentially permits the Administrator of A.I.D. to authorize the expenditure of federal funds without regard to other laws and regulations if necessary to accomplish the purposes of the Foreign Assistance Act of 1961, as amended. The authority had been used sparingly in the past; however, no records were found to show the authority has ever been used to waive the statutory limitation on employee claims since enactment of the Military Personnel and Civilian Employees' Claims Act of 1964.

Employees of contractors, universities, and commercial firms and grantees are excluded from the Military Personnel and Civilian Employees' Claims Act definition of a federal employee. In an attempt to be equitable, in April 1991, the Assistant to the Administrator for Management Services (now Finance and Administration) authorized the adjudication of claims for personal property losses for employees of contractors and grantees in Liberia and Somalia.

The Director and Deputy Director, Office of Management Operations, Bureau for Management Services were responsible for approving employee claims for settlement. The waiver decisions referred to previously were made by the Assistant to the Administrator for Management Services under authority delegated by the Administrator. The Transportation and Storage Branch within the Office of Management Operations handled the actual interface with the employees and the additional mechanics of receiving the claims, calculating the allowable amounts, and recommending the amounts that were paid to the employees. Certifying Officers in the Financial Management Division certified the amounts paid by the Department of the Treasury.

Audit Objectives

This audit was undertaken by the Office of the Inspector General, Programs and Systems Audits as a result of work begun in March 1991 that was directed at evaluating the controls over the storage and transportation of household effects--the subject of a separate report. During the early stages of the storage and transportation audit, the staff became aware of A.I.D.'s use of the Foreign Assistance Act waiver authority to pay claims above the \$40,000 limitation. After discussions between the Inspector General and members of the Bureau for Management Services involved in the waiver decisions, the Inspector General ordered a special audit of evacuee claims. This was based upon concerns that use of the waiver authority may not have been legal, and that the provisions of the Military Personnel and Civilian Employees' Claims Act regarding how claims were to be processed may not have been followed.

Accordingly, the audit objectives were: (1) Did A.I.D. have authority by virtue of Section 636 (b) of the Foreign Assistance Act to (a) waive the \$40,000 payment limitation in the Military Personnel and Civilian Employees' Claims Act for evacuees from Liberia and Somalia and (b) pay employees of contractors/grantees as if they were covered by the Claims Act? and (2) Did A.I.D. process and pay evacuee claims in accordance with provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, and A.I.D. Handbook 23?

The audit work was limited to the problem areas noted. The audit findings pertain to all 25 claims submitted by evacuees through the cutoff date of June 30, 1991.

REPORT OF AUDIT FINDINGS

Did A.I.D. have authority by virtue of Section 636 (b) of the Foreign Assistance Act to (a) waive the \$40,000 payment limitation in the Military Personnel and Civilian Employees' Claims Act for evacuees from Liberia and Somalia and (b) pay employees of contractors/grantees as if they were covered by the Claims Act?

The Office of the Inspector General concluded that A.I.D. did not have authority by virtue of Section 636 (b) of the Foreign Assistance Act to waive the \$40,000 payment limitation in the Claims Act, or to pay employees of contractors/grantees as if they were covered by the Claims Act.

Actions to use the waiver authority and process claims of employees of contractors and grantees were without proper legal authority

Section 636 (b) of the Foreign Assistance Act of 1961, as amended can be used to expend funds outside the United States as may be necessary to accomplish the purposes of the Act. The Military Personnel and Civilian Employees' Claims Act of 1964, as amended is the Agency's authority to settle claims of its federal employees. A.I.D. used the waiver authority of Section 636 (b) to pay employee claims above the \$40,000 statutory limitation of the Claims Act without demonstrating that such payments were necessary to accomplish the purposes of the Foreign Assistance Act. A.I.D. also agreed to pay the claims of employees of its contractors and grantees under the administrative procedures of the Claims Act even though such employees were not covered by the Act.

A.I.D. took these unusual steps because it considered them a fair response to a bad situation wherein employees lost many of their possessions. We understood management's motivations, but we found no basis in law to sanction the actions taken. Because of the way in which evacuee claims were handled, the A.I.D. costs were more than doubled in certain cases.

The following recommendations are made to correct these problems.

Recommendation No. 1: We recommend that the Associate Administrator for Finance and Administration:

- 1.1** rescind the decision to waive the \$40,000 per claim limitation contained in the Military Personnel and Civilian Employees' Claims Act of 1964, as amended;
- 1.2** rescind the decision to waive the maximum allowable amounts per category of items contained in A.I.D. Handbook 23, Appendix 10A, Table of Maximum Amounts Allowed;
- 1.3** rescind the decision to adjudicate claims of employees of A.I.D. contractors and grantees in Liberia and Somalia under the administrative procedures of A.I.D. Handbook 23; and
- 1.4** direct that claims of employees of A.I.D. contractors and grantees in Liberia and Somalia be submitted for resolution to the applicable A.I.D. Contracts and Grants Officers.

Agency management and the Office of Inspector General reached different conclusions regarding the legality of using Section 636 (b) authority to waive the \$40,000 per claim limitation of the Military Personnel and Civilian Employees' Claims act of 1964, as amended, and whether A.I.D. complied with the provisions of the Claims Act in processing and paying such claims. We, therefore, make the following recommendation.

Recommendation No. 2: We recommend that the Associate Administrator for Finance and Administration request a formal Comptroller General opinion on (a) whether A.I.D. by virtue of Section 636 (b) of the Foreign Assistance Act of 1961, as amended had the authority to waive the \$40,000 per claim limitation in the Military Personnel and Civilian Employees' Claims Act of 1964, as amended to pay A.I.D. employees evacuated from Liberia and Somalia, and to pay employees of A.I.D. contractors and grantees as if they were covered by the Claims Act, and (b) whether A.I.D. complied with the provisions of the Claims Act in processing and paying such claims, as detailed in the text of this report.

On October 31, 1990, the former Assistant to the Administrator for Management approved a recommendation from the Director, Office of Administrative Services to waive the \$40,000 per claim limitation for Liberia evacuees. A similar recommendation for Somalia evacuees was approved on February 11, 1991. Also, the maximum amounts allowable for specific categories of items were increased and then waived. When combined with removal of the \$40,000 per claim overall ceiling, waiving the limits on individual items meant that A.I.D. would allow maximum compensation for the losses suffered. The audit was unable to determine who made the decision to waive the limits on individual categories, when the decision was made, or why it was made. However, it was apparent from discussions with responsible A.I.D. officials that these limits were considered unreasonable and a constraint to giving employees full compensation for their losses. As a consequence of the waiver decisions, 13 of the 22 claims adjudicated by A.I.D., or 59 percent, were adjudicated above the \$40,000 level as of June 30, 1991. These 13 claims in total exceeded the \$40,000 limitation by about \$392,000 and ranged for individual claims from about \$42,000 to about \$108,000.

The rationale for waiving the \$40,000 limitation, in essence, was a desire on the part of certain A.I.D. officials to fairly compensate employees who had lost many of their possessions due to situations over which they had no control. With respect to extending payments to the employees of contractors and grantees, the rationale was that these employees should not be treated differently than the A.I.D. employees.

The Director, Office of Administrative Services (the individual responsible for the claims settlement function) submitted the Decision Memoranda recommending use of the waiver authority. He told us that he thought it was unfair that employees who had lost their effects were being limited to \$40,000 when their losses, including the cost of their vehicles, in many cases greatly exceeded that amount. Accordingly, he directed his staff to see if there was a way employees could be compensated above the legal limits. After conferring with General Counsel, he was advised by that office that the limit could be waived by using authority granted the Administrator under Section 636 (b) of the Foreign Assistance Act of 1961, as amended. This authority had been delegated previously to the Assistant to the Administrator for Management Services level, a level several steps below the Administrator. Subsequently, the Director, Office of Administrative Services recommended that such actions be taken and his recommendations were accepted. The Deputy Administrator of A.I.D. told us that he was not an active participant in making the decision. However, he was aware of what was being done and he approved of the decision and encouraged it.

Settling claims above the legislatively prescribed limit can be viewed as recognition of the dangers to which foreign service officers are exposed periodically. Undoubtedly, these higher settlements reflected favorably on the employees' view of top management. However, there

were consequences to these actions with respect to setting precedent that are cause for concern.

The following analysis provided, in part, by the Office of the Inspector General's Legal Counsel addresses whether A.I.D. was legally correct in using the waiver authority and whether the authority was misused since A.I.D., like all other federal agencies, was covered by provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended.

Section 636 (b) of the Foreign Assistance Act of 1961, as amended (Section 2396, Title 22, U.S. Code) states: "Funds made available for the purposes of this Act may be used for ...expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government as may be necessary to accomplish the purposes of this Act."

This section of the Act excludes expenditures for the compensation of personnel. The term "compensation of personnel" is defined as including reimbursement for lost or damaged property.¹ Under this interpretation, A.I.D. had no legal basis for using 636 (b) to settle its employees' claims. Even if A.I.D. could find some technicality under 636 (b) to compensate its employees for losses and damages in Liberia and Somalia, a critical element is missing which is required before the Section can be found to be a legal remedy. That is, there is no showing that the use of 636 (b) was necessary for accomplishing the purposes of the Foreign Assistance Act.

When the Congress enacted the predecessor section to 636 (b) (22. U.S.C. 2396) in 1948, it intended the section to be a general escape clause authorizing expenses which might otherwise be barred by other statutes, but were necessary to accomplish the purposes of the Foreign Assistance Act. In line with these authorized purposes, A.I.D. has used 636 (b) to pay overseas torts claims "...because the inability to settle such claims will cause diplomatic embarrassment far outweighing the monetary amounts involved."

By using the Section 636 (b) authority in the cases of evacuees, A.I.D. was able to compensate its employees with no apparent monetary limit on how much each employee could recover. The authority of 636 (b) is unique to A.I.D., therefore, A.I.D. employees in

¹ Black's Law Dictionary defines "compensation" as "Equivalent in money for a loss sustained; recompense or reward for some loss or injury...". 6th Edition (West Publishing Co., St. Paul, Minnesota, 1990.

Liberia and Somalia received compensation that no other U.S. employee, civilian or military, could receive for similar losses. It is unlikely that conferring special benefits on A.I.D. employees is what Congress had in mind when it gave A.I.D. the waiver authority.

By memorandum dated July 19, 1991, the Associate Administrator for Finance and Administration responded to our request for an explanation as to why the Section 636 (b) authority was used to waive the \$40,000 per claim statutory limitation (see Appendix II for the complete text of the response). The Associate Administrator stated: "It is clear from the legislative history and executive branch practice that one of the primary uses of the section 636(b) authority is to obviate or mitigate hardship to personnel administering foreign assistance programs overseas. In the case of both Liberia and Somalia the catastrophic nature of the losses and the circumstances surrounding the losses justified the use of the authority of section 636 (b) to relieve the extraordinary hardship suffered by A.I.D. employees." The only case precedent offered in support of this position concerned an incident in Laos in 1960 where a sum of money was lost from a safe in an A.I.D. office.

We disagreed with the Associate Administrator's stated rationale for using the 636 (b) waiver authority. There was nothing in the legislative history to support the allegation that one of the Section's primary uses was to obviate hardships to personnel administering foreign assistance programs overseas or that A.I.D. had used the authority for such purposes in the past. Quite the opposite, on past occasions when A.I.D. employees were evacuated from posts with losses of personal property, A.I.D. did not see fit to waive the statutory limitation on claims. Contrary to the Associate Administrator's position on the matter, we believe the 636 (b) authority was intended to allow the Administrator to authorize expenditures barred by other statutes only when such expenditures were necessary to accomplish the purposes of the Foreign Assistance Act. A.I.D. did not show that compensation for personal property losses was necessary to accomplishing the purposes of the Foreign Assistance Act. Thus, we concluded that use of the waiver authority was not in accordance with the provisions or the intent of the statute in the cases of the Liberia and Somalia evacuees.

**Claims were being processed for
employees of A.I.D. contractors
and grantees**

On April 3, 1991, the Assistant to the Administrator for Management Services authorized the adjudication of claims for personal property losses due to civil insurrection for employees of A.I.D. contractors and grantees in Liberia and Somalia. The Action Memorandum of April 2, 1991, requesting this decision states that these claims would not be bound by the \$40,000 statutory limitation of the Military Personnel and Civilian Employees' Claims Act

of 1964, as amended, because A.I.D. wished to treat employees of its contractors and grantees on the same basis as other employees in similar situations. At the time, A.I.D. officials expected to receive about seven claims for Liberia and six claims for Somalia. No estimate of the expected costs to the government was given.

A.I.D.'s willingness to adjudicate the claims of employees of its contractors and grantees in the same manner as its own employees goes beyond A.I.D.'s contractual obligations and, in our opinion, is inappropriate. According to A.I.D. management, there are no provisions in the various contracts and grants that require A.I.D. to pay for personal property losses incurred by employees of contractors or grantees. Nor is there legal authority to pay such claims under the Military Personnel and Civilian Employees' Claims Act, since the Act applies only to military personnel and federal employees.

Federal Acquisition Regulations allow for consideration of cost issues within the context of the applicable contractual documents. Accordingly, the appropriate way of addressing personal property losses is for the contractors and grantees to submit their claims to A.I.D. for consideration of A.I.D. contracts and grants officers. Personal property losses then could be considered as contract claims and, as such, be bound by terms of the contract.

Management Comments and Our Evaluation

A.I.D. management (the Office of General Counsel) advised that contrary to the audit report conclusions, it was appropriate for A.I.D. to reimburse Agency employees and employees of Agency contractors and grantees in excess of the \$40,000 per claim statutory limitation. General Counsel's opinion appeared to be based upon the conclusion that the payment of claims for A.I.D. employees and employees of its contractors and grantees were permitted by language in Section 636 (b) which allows expenditures for "other administrative and operating purposes".

The A.I.D. management response misstated the Office of Inspector General position regarding the legality of using Section 636 (b) authority to pay these claims. Our position was not based solely on construction of the term "compensation of personnel", as stated in the response. Rather, the operative statement in Section 636 (b), in our opinion, involved the need to demonstrate that the expenditure of funds for paying claims over \$40,000 was necessary to accomplish the purposes of the Foreign Assistance Act. (see page 7) Nothing was provided us during the course of this audit or in the formal Agency response to the draft report which convinced us that payments for lost personal effects were necessary to accomplish the purposes of the Foreign Assistance Act. Thus, we continued to believe that A.I.D.'s use of Section 636 (b) to waive the \$40,000 per claim limitation of the Military Personnel and Civilian Employees' Claims Act was not legally correct.

The response did not specifically address any of the audit report recommendations in this section. Consequently, we considered all these recommendations to be unresolved. In view of the impasse that existed between the Agency and the Office of Inspector General on the legality of the actions taken to pay evacuee claims, we added a new recommendation that A.I.D. seek a formal Comptroller General opinion on these matters. (see Recommendation No. 2, page 5).

Did A.I.D. process and pay evacuee claims in accordance with provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, and A.I.D. Handbook 23?

A.I.D. did not process and pay evacuee claims in accordance with provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, and A.I.D. Handbook 23.

Claims processing and payment procedures did not conform to requirements of the Act and A.I.D. regulations.

The criteria for paying claims under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, is set forth in Section 3721 (f) which states: A claim may be allowed under this section only if (1) the claim is substantiated, (2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances, and (3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant. These criteria are implemented by various sections of A.I.D. Handbook 23.

A.I.D. claims settlement officials elected not to make the determinations called for by law and regulation concerning the substantiation of claims, whether possession of the items claimed was reasonable or useful under the circumstances, and whether employee negligence was involved in the losses. As a result, A.I.D. made payments for numerous items that appeared not to meet the requirements of the Act. Other matters pertaining to the claims settlement issue involved the need for (1) employees to be knowledgeable about conditions in their posts of assignment and provisions of the claims settlement legislation, (2) a full accounting of the claims submitted, and (3) coordination with the Department of State on recovered property.

The following recommendations address the actions that should be taken with respect to these findings.

Recommendation No. 3: We recommend that the Associate Administrator for Finance and Administration:

- 3.1 develop appropriate criteria for settling Liberia and Somalia evacuee claims that will fulfill the requirements of Section 3721 (f) of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, concerning (a) substantiation of claims, (b) whether possession of the items claimed was reasonable or useful under the circumstances, and (c) whether negligence on the part of the employee was involved;**
- 3.2 apply the criteria established in Recommendation No. 3.1 in reviewing all completed and pending claims;**
- 3.3 recover funds from claimants for claims inappropriately settled, including those settled above (a) the \$40,000 statutory limitation, and (b) the maximum allowable amounts per category of item;**
- 3.4 establish and implement procedures for the independent review of the Claims Examiners' recommended settlements. These procedures should ensure compliance with applicable laws and regulations, as well as ensure arithmetical accuracy;**
- 3.5 establish and implement procedures that will ensure A.I.D. employees are adequately advised beforehand with respect to political stability and personal security conditions of posts of assignment;**
- 3.6 establish and implement procedures that will ensure A.I.D. employees are familiar with personal loss provisions as contained in the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, and A.I.D. Handbook 23;**
- 3.7 establish and implement procedures that will provide claimants with a full accounting of their claims and require a signed settlement sheet to acknowledge resolution of the claim; and**

- 3.8 establish and implement procedures for coordinating with the Department of State for the identification of any A.I.D. property "lost", and upon recovery, adjust the claims, as appropriate, to reflect any such recoveries.

Were the claims substantiated?

A.I.D. Handbook 23, Section 321 addresses the question of substantiation. It states that in addition to the information required on the claim form, the following evidence should be furnished when applicable and available:

- (a) Copy of travel orders assigning claimant to the post and/or authorizing shipment of property;
- (b) Corroborating statements from persons who have personal knowledge of the facts concerning the claim;
- (c) Receipts, canceled checks, or other documentation showing acquisition;
- (d) Statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the insurer's name. If the claimant has insurance and had not submitted a claim; the failure to do so must be explained;
- (e) Photographs in any case where such would support the claim made.

Examples in the table below show that claims approved for payment were not substantiated by any or most of the documentation called for. These eight claims were all settled above \$40,000.

Claimant	Travel Orders	Corroborating Statements	Receipt, Canceled Checks, Etc.	Insurance	Photos
1	No	No	No	Yes	Yes
2	No	No	No	Yes	No
3	No	No	No	No	No
4	No	No	No	No	No
5	No	No	No	No	No

Claimant	Travel Orders	Corroborating Statements	Receipt, Canceled Checks, Etc.	Insurance	Photos
6	No	No	No	No	No
7	No	No	No	No	No
8	No	No	No	No	No

Claimants 1 to 4 provided catalog quotes and other types of documentation to substantiate the replacement costs, but not proof of acquisition cost or proof of purchase.

The audit did not try to determine what constituted adequate supporting documentation that would satisfy the term "substantiated" as stated in the Act because of the subjectivity involved in making the required judgements, but instead focused on the process used. As indicated by the examples above, the Claims Examiner and other responsible A.I.D. officials did not insist on documentation as a prior condition for payment of the items claimed. Thus, the process employed by A.I.D. was not directed to establishing compliance with the Act.

The Claims Examiner commented on the lack of documentation in a memorandum dated October 15, 1990, to the Director, Office of Management Operations when he wrote:

"...While I can appreciate the apparent hardships these employees are having to endure, I am equally concerned about our carte blanche procedures towards this situation in general and our overall claims procedures in particular. This concern is further magnified inasmuch as we are not requiring that employees provide evidence to substantiate the amounts claimed -- a direct violation of the Claims Act and our regulations."

The Director, Office of Management Operations told us his response to this memorandum was that he expected claims to be processed expeditiously, but properly, and legally. Nevertheless, there was an absence of documentary support of the claims on the record. In fact, A.I.D. did not use a credible overall approach to resolving its claims in terms of : (1) requiring substantiation of the amounts claimed, (2) determining the necessity for and the utility of the items claimed, and (3) establishing whether any negligence was involved. All of these items are required by law and by A.I.D. regulations.

The A.I.D. settlement procedures were in sharp contrast to those used by the Department of State. The State Claims Examiner told us that the same stringent ground rules for supporting ordinary claims were being applied in the cases of evacuee claims. This meant that for high value items (over \$1,000) employees were required to produce documentary evidence of purchase through such means as canceled checks and credit card statements or else face the possibility of not being paid for the claimed losses. Even though State had

paid many of its claimants in order to alleviate possible financial hardships, State had not actually "settled" any of its claims pending the substantiation of the claimed items. In addition, State had scheduled detailed audits for 17 out of the 38 claims submitted by Liberia and Somalia evacuees and was tracking recovered property. The table below compares A.I.D. and State processing procedures. Information regarding A.I.D.'s procedures was obtained during the course of the audit. Information on State's procedures was obtained from the Department's Office of Inspector General and the Claims Examiner.

COMPARISON OF A.I.D. AND STATE CLAIMS PROCESSING PROCEDURES		
PROCEDURE	A.I.D.	STATE
1. Statutory limitation of \$40,000 per claim applied.	No	Yes
2. Limits on individual categories of items applied.	No	Yes
3. Claims finalized.	Yes	No
4. Detailed audits of selected claims scheduled.	No	Yes
5. Documentation required for at least higher value (over \$1,000) items.	No	Yes
6. Acquisition cost adjusted for inflation, less depreciation used to derive compensation amount.	In some cases	Yes
7. Inquiries made into necessity for and reasonableness of items lost.	No	Yes
8. Inquiries made into whether employee negligence was involved.	No	Yes

Demonstrative proof of ownership, possession, and value is not an unreasonable requirement, at least for the more costly items. A.I.D Handbook 23, Appendix 10A, Section 318.5, in fact, requires employees to declare all Hi-Val(ue) items (Items over \$500) in writing at the time of making arrangements for the shipment of their household effects by filing a detailed listing of such items with the Office of Transportation. Unless the employee furnishes this declaration, Hi-Val items may not be considered for payment in any amount in the settlement of a claim for possible loss or damage. Moreover, supporting documentation is usually available from vendors or credit card companies when items are purchased on credit. Banks usually can provide canceled checks upon request and items purchased through the Military Exchange System can oftentimes be documented.

Several of the claimants we interviewed told us that had they been asked to substantiate their claims with receipts, canceled checks and the like, they would have been able to provide some level of support. For example, one claimant told us he had canceled checks for several expensive musical instruments he lost and had a receipt for an item he had bought from a person leaving post. Another person told us he had a list of the items packed in his apartment that were sent to the Embassy compound for safekeeping after his departure from post. The list had been prepared by an A.I.D. staff member tasked with

packing the items left behind. Some claimants said they probably could have gone back to where they had bought their goods and obtained receipts.

In sum, A.I.D. essentially bypassed the Claims Act requirement that claims must be substantiated before they can be paid. Employee assertions that all supporting documentation was lost as a result of the evacuations seems to have been accepted without questions. The desire to make payment on the claims promptly appeared to have overridden the Agency's responsibility to require the claimants to provide support as to the dates of acquisition, cost of the items, and possession at the time of loss. To the extent employees offered supporting documentation and submitted it along with their claims, the documentation was accepted. However, there was little attempt on A.I.D.'s part to require actual support as a basis for payment or to verify any of the claimed losses on their own initiative even though it was clear that additional evidentiary material was available.

Was possession of the property reasonable and useful under the circumstances?

A.I.D. Handbook 23, Appendix 10A, Section 318.1 addresses the questions of reasonableness and usefulness. It states that:

Compensation may be allowed under this regulation only for such types and quantities or amounts of property as determined by the approving authority to have been reasonable, useful, or proper in the attendant circumstances at the time and place of the loss. In determining the reasonableness of property included in a claim, the approving authority will take into consideration the circumstances attending acquisition or possession of the property and the manner of damage or loss.

The A.I.D. Personal Property Claims Handbook (A.I.D. Handbook 23, Attachment 10 D) amplifies the above section. It states that the Act contemplates payment only for the loss or damage to property whose possession is determined to be reasonable, useful, and proper under the circumstances. This determination may depend, in part, on whether the possession or use of an item is considered to be incidental to a claimant's service. The Handbook also cites several specific circumstances suggested in the regulations that can be considered, such as; the size of family; the need to have more than average quantities of an item; the circumstances attending acquisition or possession of the property; and the manner of damage or loss.

The claims files showed no evidence of determinations being made along the lines suggested by the regulations. The Claims Examiner agreed that there was no attempt to do so apparently on the basis that A.I.D. was not in a position to prescribe what employees should or should not have at post. Normally, the A.I.D. regulations provided a safeguard against paying excessive amounts, at least in terms of overall categories of items, through the maximum allowable amounts established for categories of items. These limits come into

play when a claim exceeds a certain number of dollars for a given category. For example, compensation for computers and accessories is limited to \$3,000. Applying these limitations controls the total compensation amount for the individual category of computers and accessories, even if it does not address the issue of whether the items actually were reasonable or useful under the circumstances. Similar limitations ordinarily apply with respect to books, (\$2,000), collections (\$5,000) and so forth.

In the cases of the Liberia and Somalia claims, these maximum allowable amounts were waived or not applied. Although the Claims Examiner was against waiving the maximum amounts, there was a sentiment among others that the limits were unreasonable and were a constraint to awarding claimants full compensation for their losses. A.I.D. Handbook 23, Appendix 10A, Section 318.2 allows the waiver of the maximum allowable amounts only for unusual situations. When waived, the record must show why the limitations were not applied. None of the claims examined contained justifications for waiving the limitations.

As a result of this approach to dealing with the claims settlement process, the record shows that A.I.D. paid much more than it would have had the limits been applied. We did not quantify the overall difference, but the following examples contrast the amounts paid with what would have been paid had the limits been applied as called for by A.I.D. Handbook 23, Appendix C, Table of Maximum Amounts Allowable--for Claims Accruing as a Result of Official Evacuation and/or Abandonment for Losses Which Occur on or After April 1, 1990.

Category	Amount Paid	Maximum Amount	Difference	
			\$	%
Computers	\$ 12,273	\$3000	\$9,273	309
	5,205	3,000	2,205	74
Jewelry	17,919	*3,500	14,419	412
	30,200	*3,500	26,700	763
Clothing	29,918	2,500	27,418	1,097
	12,900	2,500	10,400	416
Books	7,447	2,000	5,447	272
Paintings	12,566	3,000	9,566	319
Videocassette, Recorders and Tapes	3,471	2,500	971	39
	3,335	2,500	835	33
Camera and Photo Equipment	3,584	1,500	2,084	139

* This is the total maximum allowable amount for both jewelry (\$3,000) and costume jewelry (\$500) as the claims did not adequately distinguish between the two categories.

As discussed later on, the record also showed that a wide variety of household items were paid for. A.I.D. does not dictate how its employees should live overseas or what kind of lifestyle they should follow, except for the general caveat that A.I.D. employees should not live in an opulent lifestyle. It is important to note, however, that many A.I.D. employees in Liberia and Somalia lived in a manner that compared favorably to living in the United States. Employees and their families sometimes had two cars, at least one computer with software and computer games, two or more television sets, a large amount of stereo equipment, several cameras, and extensive amounts of sports equipment. In effect, it was difficult to distinguish the personal effects of the A.I.D. employee living overseas from any other person living in the United States. Emulating the U.S. lifestyle means that personal property losses, under any circumstances, will be sizeable, and it accounted for, in part, the large dollar value and the diversity of the losses claimed by Liberia and Somalia evacuees and paid for by A.I.D.

To illustrate the audit concern about some of the items paid for, the following examples were extracted from completed claims for A.I.D. employees in Liberia and Somalia. In each of the cases mentioned below, the claims files indicated that the claimants were paid without further evaluation of whether the lost items were reasonable or necessary under the circumstances.

- household effects shipped to post for the purpose of selling them prior to retirement. (value not known)
- furniture and appliances acquired from A.I.D. auctions for use in Liberia after retirement. (\$5,072) A second vehicle was also acquired for this purpose and compensated for.
- 186 silver and amber necklaces designed and manufactured for resale at cost. (\$13,308)
- 335 audio cassettes; 49 compact discs; and 94 video cassettes. (\$8,167)
- 120 pairs of women's shoes (one person). (\$4,584)
- 126 pieces of fabric, cotton, wool, linen, and silk. (\$3,228)
- original oil painting. (\$2,330)
- 3 Television Sets, 3 Videocassette Recorders, and 2 Stereos. (reportedly purchased from departing personnel by employee with no dependents). (\$4,588)
- Artifacts. (\$3,735)

- Scuba Diving Equipment. (\$1,076)
- 6 Yards Cloth, Ghana. (\$2,460)
- 488 Music Albums. (\$3,119)
- 3 Large Ethiopian Rugs. (\$3,920)
- 12 African Masks. (\$1,104)
- Handcarved Wine Rack. (\$3,325)
- Fur Coats and Hats. (\$3,171)

In sum, the Claims Act required that before any claim can be paid, possession of the property must be shown to be reasonable or useful under the circumstances. Yet, there was no evidence in the record that A.I.D. attempted to make the determinations required by the Act, apparently because the Agency could not prescribe to employees what was reasonable or useful. Basically, the employees' claimed losses were accepted by A.I.D. and paid without further questioning.

Were any parts of the losses caused by negligent or wrongful acts by the claimant or an agent or employee of the claimant?

A.I.D. Handbook 23, Appendix 10A, Section 318.4 (b) states that negligence may be defined as the failure to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

The claims files show no evidence of any determinations being made concerning possible negligence. The Claims Examiner agreed. The Claims Examiner told us that early in the claims settlement process for the Liberia evacuees he was concerned that the loss of about \$30,000 in jewelry may have been caused in part by negligence on the part of the couple involved. He based his concern on the fact that the wife had left post during the evacuation several days before the husband and neither one took the jewelry with them when they had the apparent opportunity to do so. He said he did not pursue the case because he was told to adopt the posture that no negligence was involved on anyone's part. After that, the issue of possible negligence evidently was not addressed in the review of claims.

This audit was not intended to determine whether employees exercised the degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances. Rather, the audit's focus was on how A.I.D. made these judgments, which were called for by the Claims Act. Based upon our understanding of the evacuation

circumstances, and from a review of cable traffic, talking with claimants, and discussing claims processing procedures with the representative of another federal agency, there were aspects of A.I.D.'s claims resolution process which were troubling because of indications of possible negligence on the part of several parties.

Liberia and Somalia, for example, were "trouble" spots for a long time before A.I.D. was forced to close its Missions. Indeed, A.I.D. was in the process of winding down both Missions when the evacuations took place. Despite recognized uncertainty about political stability and personal security in both countries, A.I.D. employees were not formally forewarned or advised by Bureau or Mission officials as to what to bring into country or what to leave behind.

Employees brought with them substantial amounts of personal belongings; including expensive jewelry, new cars, heirlooms, antiques, and works of art. Some employees even supplemented their belongings with purchases made during the same time period that fighting was taking place. When orders were received to evacuate, some employees left behind highly valuable and easily portable items, apparently on the basis that they would be returning to post and their belongings would be safe in the interim.

Finally, in both Liberia and Somalia there was at least a one-month window where actions could have been taken to move the effects of employees out of the country and to avoid the magnitude of the losses suffered. Decisions were made, however, to leave A.I.D. effects behind in unguarded residences and parking areas in the case of Liberia and to move them into A.I.D. warehouse space and the compound in the case of Somalia. At the same time, in Somalia efforts were being made to continue working through the host government to arrange shipments out of the country with all the bureaucratic delays that such arrangements normally entail. In contrast, we were told that the U.S. military airlifted the effects of its personnel out of Somalia with its own aircraft.

In summation, the Claims Act question of whether there was any negligent behavior on the part of the employees or their agents was never directly addressed by A.I.D. before making payments on the claims submitted. The operative assumption was that there was no negligence on the part of anyone involved. The audit found no definitive basis for disputing that conclusion. However, the circumstances of the evacuations and the resultant losses described above indicate that A.I.D. claims settlement officials should have made more careful analyses of the claims and resolved any issues of possible culpability prior to making payments.

Other Problems Related to Procedures for Adjudicating Claims

During the course of the audit, five additional matters were disclosed that bear reporting: errors in the payment amounts; the use of replacement costs to settle claims; the failure to give a full accounting of the disposition of the claims; the lack of employee knowledge about

applicable claims settlement legislation and A.I.D. regulations in this area; and the possible recovery of "lost" property.

- A.I.D. regulations contemplate that the amount of compensation paid for claims will be calculated correctly. Out of a total of 22 claims adjudicated as of the cutoff date of this audit, June 30, 1991, the audit found there were mathematical errors on 19, or 86 percent of the total. These errors resulted in possible overpayments of \$38,053. A contributing factor for the errors was the failure to independently verify the calculations made by the Claims Examiner.
- A.I.D. regulations provide that employees will be reimbursed the depreciated cost of their claimed losses. This value is derived by taking acquisition cost, adjusting for inflation, and applying a table of depreciation according to the type of asset involved. Most of the claims for Somalia evacuees were calculated on the basis of current replacement costs, depreciated back to the year of acquisition of the items lost. According to the Claims Examiner, he deviated from established A.I.D. procedures in this area because he was instructed to do by his supervisors.
- In our opinion, employees should be apprised of the adjustments in value made by the Claims Examiner in the course of processing their claims. However, A.I.D. procedures did not require that claimants receive a full accounting of their claims. In some cases no compensation was given for individual items. In other cases the compensation exceeded the claimed values. These determinations were not always explained in the claims files, nor were they always made known to the claimants. Settlement amounts were stated in letters sent to the claimants, but these letters did not show how particular items were handled in terms of the compensation being awarded or how that level of compensation was determined. In addition, claimants were not required to sign settlement sheets or any other similar form to acknowledge satisfaction of the claim. Evidently, acceptance of the government's check constituted resolution.
- It is important for employees to know and understand the provisions of applicable laws and regulations related to the payment of claims so that they can appropriately safeguard their assets or limit their financial risk. Yet, with the exception of two Executive Officers, none of the claimants interviewed during the audit indicated substantive knowledge about the Military Personnel and Civilian Employees' Claims Act or the A.I.D. regulations that implemented the Act. A.I.D. did not have specific procedures for making its employees knowledgeable about laws and regulations that affected the terms and conditions of their employment overseas. Most employees who suffered

losses took no precautionary steps to safeguard their belongings and were not in a position to provide documentary evidence to establish their claims.

- Recovery of "lost property" after a claim has been settled could require the return to A.I.D. of the compensation paid. None of the 12 claimants interviewed held out hope that their personal effects would be recovered. But, discussions with Department of State officials in August 1991 disclosed that a considerable amount of U.S. property in Liberia had been recovered. We were told that about 30 privately owned vehicles had been recovered and these vehicles had been sold or were going to be sold so that the U.S. Government would recoup some of the money it had paid out in claims to Department of State employees. Unsubstantiated reports indicated that other U.S. property was being sold in Kenya and along the Ivory Coast border with Liberia. Also, the effects of at least three Department of State employees had been recovered in Liberia. However, there were no A.I.D. procedures in effect for coordinating with State on these matters. In view of the State recoveries it is possible that some A.I.D. effects will be recovered as well. If property is recovered, A.I.D. must be prepared to adjust any claims still pending or to seek refunds for claims already settled.

Management Comments and Our Evaluation

A.I.D. management disagreed with the audit report conclusion that A.I.D. did not follow the Claims Act and its own regulations when processing and adjudicating claims. In support of its position, management offered some general statements of an explanatory nature. With respect to the audit report recommendations, A.I.D. management saw no need to implement Report Recommendation Nos. (now) 3.1, 3.2, 3.3, and 3.4. A.I.D. management agreed to implement Report Recommendation Nos. (now) 3.5, 3.6, and 3.8, and to reconsider its current procedures for 3.7.

The A.I.D. management response contained no information that would invalidate the accuracy of the audit report's findings. In addition, the response failed to present a convincing case why certain of the audit report recommendations should not be implemented. Management indicated that A.I.D.'s current regulations do not take into account the extraordinary circumstances of evacuations. Accordingly, the Agency's policies and procedures for claims adjudication were being rewritten with publication of a revised Handbook 23 expected before the end of 1991. We saw no reason to modify or change the text of the report or its conclusions and recommendations based upon the management response received, other than to add a recommendation to seek a Comptroller General opinion on whether A.I.D. complied with applicable laws and regulations in processing and paying claims. (see Recommendation No. 2)

REPORT ON INTERNAL CONTROLS

This section provides a summary of our assessment of internal controls for the audit objectives.

Scope of Our Internal Control Assessment

We have audited the claims submitted by A.I.D. evacuees from Liberia and Somalia through June 30, 1991, and have issued our report thereon dated November 25, 1991.

We made our audit in accordance with generally accepted government auditing standards which require that we:

- assess the applicable internal controls when necessary to answer the audit objectives and;
- report on the controls assessed, the scope of our work, and any significant weaknesses found during the audit.

We considered A.I.D.'s internal control structure in order to determine what audit procedures would be necessary to reliably answer the audit objectives. We did not consider the internal control structure for the purpose of expressing an opinion on the internal controls.

General Background on Internal Controls

Under the Federal Managers' Financial Integrity Act and Office of Management and Budget implementing policies, A.I.D. management is responsible for establishing and maintaining adequate internal controls. The General Accounting Office has issued "Standards for Internal Controls in the Federal Government" to be used by Agencies in establishing and maintaining internal controls. Management is required to assess the expected benefits versus the costs of internal control policies and procedures. The objective of internal control policies and procedures is to provide management with reasonable--but not absolute--assurance that resource use is consistent with applicable laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports. Because of inherent limitations in any internal

control structure, errors or irregularities may occur and not be detected. Moreover, it is difficult to project whether an internal control system will work effectively in the future because (1) changes in conditions may require changes in internal control policies and procedures or (2) compliance with internal control policies and procedures may deteriorate.

For purposes of this report we have classified the applicable internal controls into the following categories:

- the claims submission process
- the claims review process
- the claims settlement process.

For each category, we obtained an understanding of the design of relevant policies and procedures and determined whether they had been placed in operation. We also assessed the risk that the controls might not prevent the occurrence of errors or irregularities or might not ensure the timely detection of errors and irregularities.

In performing this work, we found certain significant weaknesses in the internal controls. Significant weaknesses are those which, in our judgment, could adversely affect A.I.D.'s ability to ensure that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports.

Conclusions for Audit Objective One

The first audit objective essentially involves a legal determination regarding the use of certain authority contained in the Foreign Assistance Act of 1961, as amended. An evaluation of internal controls was not necessary to answer the audit objective. Accordingly, we express no conclusions with respect to the adequacy of internal controls concerning this objective.

Conclusions for Audit Objective Two

The second objective addresses whether A.I.D. processed and paid claims as required by the Military Personnel and Civilian Employees' Claims Act of 1964, as amended and A.I.D. Handbook 23 provisions.

We found the following significant weaknesses:

- the evacuee claims as submitted and processed were not reviewed to ensure conformity with A.I.D. Handbook 23 requirements with respect to

substantiating the claims, including copies of receipts, travel authorizations, corroborating statements, and photographs;

- the Claims Examiners' calculations of recommended settlement amounts were not independently verified to ensure mathematical accuracy and compliance with A.I.D. Handbook 23 guidelines;
- specific disclosure to the claimants was not required as to how much was being offered in settlement of each item lost;
- settlement procedures did not require employees to sign a settlement sheet to show full acceptance of the A.I.D. offer and resolution of the claim.

None of the weaknesses were disclosed by A.I.D.'s 1991 internal control review which was required by Office of Management and Budget Circular A-123.

REPORT ON COMPLIANCE

This section summarizes our conclusions with respect to A.I.D.'s compliance with applicable laws and regulations.

Scope of Our Compliance Assessment

We have audited the claims processing procedures used by A.I.D. for evacuees from Liberia and Somalia. The audit covered all claims (25) received through June 30, 1991, and have issued our report thereon dated November 25, 1991.

We conducted our audit in accordance with generally accepted government auditing standards, which require that we plan and perform the audit to fairly, objectively, and reliably answer the audit objectives. Those standards also require that we:

- assess compliance with applicable requirements of laws and regulations when necessary to satisfy the audit objectives (which includes designing the audit to provide reasonable assurance of detecting abuse or illegal acts that could significantly affect the audit objectives) and;
- report all significant instances of noncompliance and abuse and all indications or instances of illegal acts that could result in criminal prosecution that were found during or in connection with the audit.

General Background on Compliance

Noncompliance is a failure to follow requirements, or a violation of prohibitions, contained in statutes, regulations, contracts, grants and binding policies and procedures governing entity conduct. Noncompliance constitutes an illegal act when the source of the requirement not followed or prohibition violated is a statute or implementing regulation. Noncompliance with internal control policies and procedures in the A.I.D. Handbooks generally does not fit into this definition and is included in our report on internal controls. Abuse is furnishing excessive services to beneficiaries or performing what may be considered improper practices, which do not involve compliance with laws and regulations.

Compliance with laws and regulations applicable to the processing of evacuee claims for the loss or damage to personal property is the overall responsibility of A.I.D.'s Bureau for Management Services (now for Finance and Administration). As part of fairly, objectively, and reliably answering the audit objectives, we examined the Agency's decisions to waive the \$40,000 per claim limitation of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. Section 3721 (b)) using authority granted to it by Section 636 (b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C.). We also tested A.I.D.'s compliance with certain provisions of the Military Personnel and Civilian Employees' Claims Settlement Act of 1964, as amended and A.I.D.'s regulations regarding claims settlements contained in A.I.D. Handbook 23.

Conclusions on Compliance

A.I.D. inappropriately used its authority under Section 636 (b) of the Foreign assistance Act of 1961, as amended and, as discussed below, did not comply with Sections 3721 (b) and 3721 (f) of the Military Personnel and Civilian Employees' Claims Act of 1964 as amended.

- The use of Section 636 (b) authority under the Foreign Assistance Act of 1961, as amended, to waive the statutory limitation of \$40,000 per claim contained in Section 3721 (b) of the Claims Settlement Act in order to settle claims for evacuees from Liberia and Somalia was illegal and an abuse of that authority.
 - The process for adjudicating and settling claims for evacuees from Liberia and Somalia did not comply with Section 3721 (f) of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended. This Section provides that a claim may be allowed under this section only if (1) the claim is substantiated, (2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances, and (3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant.
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<p style="text-align: center;">SCOPE AND METHODOLOGY</p>

Scope

The work was done basically at the Bureau for Management Services (now Finance and Administration) in Washington, D.C. Interviews of evacuees were done in Washington, D.C., Orlando, Florida, Nairobi, Kenya, Abidjan, Ivory Coast, and Bridgetown, Barbados.

The audit covered all 25 claims submitted by Liberia and Somalia evacuees through June 30, 1991. These claims totaled about \$1.6 million. The audit was done between June and August 1991 and was done in accordance with generally accepted government auditing standards. No previous audits were made of A.I.D. claims processing procedures.

Methodology

To achieve the first objective, we researched the legislative history of Section 636 (b) in order to establish the Congressional intent in giving A.I.D. this authority, to determine the number of times the authority had been used by A.I.D. and for what purposes the authority was used. We discussed with A.I.D. officials involved in the waiver decisions, including the Deputy Administrator, the rationale for these decisions. Based upon the research and discussions, we developed our opinions and conclusions on whether the use of the waiver authority to settle the claims in question was legal and supportable, as well as the possible implications of the decision to exercise the waiver authority.

To achieve the second objective, we developed a listing of all claims (25) received through June 30, 1991, from the files of the Claims Examiner. For each claim, we reviewed the files and documented the nature and extent of the supporting material submitted by the claimants. We discussed the claims processing procedures used with the Claims Examiner and evaluated these procedures vis-a-vis the requirements of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended. We also discussed the background and circumstances of their evacuations and their subsequent claims with seven evacuees from Liberia and five evacuees from Somalia. These discussions covered 54 percent and

38 percent, respectively, of the total claimants from these countries. Evacuees were interviewed based upon their availability to Office of Inspector General audit staffs in Washington, D.C.; Nairobi, Kenya; and Dakar, Senegal. For comparative purposes, we discussed claims processing procedures with the representative for the Department of State and the United States Information Agency. Information developed during the audit was shared with the Office of the Inspector General's investigative staff for follow-up on possible criminal violations.

M 10.27
H.B.AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20521

JUL 19 1991

MEMORANDUM

TO: IG, Mr. Herbert Beckington

FROM: AA/F&A, John F. Owens

SUBJECT: Use of Section 636(b) Authority for Personal Property Losses in Liberia and Somalia

This is in response to our meeting regarding the use of section 636(b) of the Foreign Assistance Act of 1961, as amended ("FAA"), to go over \$40,000 in paying the claims of A.I.D. employees in Liberia and Somalia for the loss of their personal belongings.

It is clear from the legislative history and executive branch practice that one of the primary uses of the section 636(b) authority is to obviate or mitigate hardship to personnel administering foreign assistance programs overseas. In the case of both Liberia and Somalia the catastrophic nature of the losses and the circumstances surrounding the losses justified the use of the authority of section 636(b) to relieve the extraordinary hardship suffered by A.I.D. employees.

In Liberia, the employees were evacuated and left with only their carry-on luggage. All their other belongings were in the A.I.D. compound, at port or in their homes, all of which were in a part of Monrovia some miles from the Embassy compound, warehouse and residences. With the complete breakdown of civil order, all three places were systematically and thoroughly looted, first by the military and then by others. Most employees lost everything, including their cars. There was no opportunity to ship or fly any personal effects out. In contrast, the property of State personnel was in or near the Embassy compound which was protected by U.S. marines and any losses were well under the \$40,000 limit. While the A.I.D. compound and warehouse was overrun, looted and burned, the Embassy never closed.

Similarly in Somalia, there was complete breakdown of civil order with repeated and widespread looting of employees' homes, the

Embassy compound and the A.I.D. compound. In December when the situation began to deteriorate, all practical efforts were made to protect and safeguard property. December evacuees packed unaccompanied baggage and Embassy/A.I.D. staff prepared it for shipment. Many employees moved their irreplaceable possessions to the A.I.D. or Embassy compounds. As security conditions worsened all remaining USAID staff packed and moved household effects to the Embassy compound. All vehicles - personal, official and project - were moved to the Embassy compound. In the end, all this labor was to no avail. Looting of A.I.D. houses began January 1. The A.I.D. compound was looted on January 2. The Embassy compound was looted on January 6, for the first time. Many buildings were burned down or hit by artillery. Not one piece of unaccompanied baggage was shipped. The most any family got out was the contents of their carry-on luggage. Military personnel did have their effects flown out on military aircraft. The situation in Somalia was exacerbated by the fact that the more expensive four-wheel drive vehicles were the norm (a reflection of State Department recommendations). The cost of such a vehicle can exceed \$20,000 or more than half of the \$40,000 limit.

In both cases there were a number of conditions that made the losses different from those normally encountered by A.I.D. employees.

One was that private insurance coverage was not available. Private insurance companies invoked the "war" clause to deny coverage. Normally such insurance coverage is available and, because relief under Claims Act is secondary to private coverage, employees' losses can be adequately covered under the \$40,000 limit.

Another was that employees lost everything - unaccompanied baggage, household effects and vehicles. Normally, an employee might suffer a loss to only one category, e.g., damage or loss of household effects but none to unaccompanied baggage or vehicle. However, the loss of all three results can easily take a claim over \$40,000.

The existence of both of these factors - no private insurance and the loss of everything - is unique and extraordinary and justifies the use of section 636(b) to go beyond the statutory limit.

It should also be noted that there is precedent for the use of section 636(b) to pay for the personal property losses of employees. The Agency used it to reimburse employees for losses suffered as a result of military operations in Laos in 1961. See attached memorandum from John Hoskins to Virgil Van Street, dated January 31, 1962.

We would also note that the limit for overseas claims was raised from \$25,000 to \$40,000 in 1980, not 1988. The 1988 amendment raised the limit to \$40,000 for claims in the United States.

I trust this adequately and accurately reflects the concerns raised by you and your staff in the meeting. Please do not hesitate to contact me or my staff if there are any other questions or concerns.

Attachment: a/s

Personal Claim # 5

January 31, 1962

[Handwritten signature]

8

Nr. Virgil Van Street, FS/CSD BA-1

John A. Hoskins
Office of the General Counsel

Laos/Regional Telecommunications System/Television Associates
of Indiana, Inc. ICAC-1305: Review of Claim for Loss of Petty
Cash Fund

Submitted for our legal review is the claim for T.A.I. for \$625.00 representing the dollar equivalent of 50,000 Kip which were lost or destroyed. The circumstances surrounding this loss are that Mr. Thomas F. Forrester, T.A.I. Project Manager in Laos, deposited two manila envelopes, one containing 30,000 K and the other 50,000 K with Mr. Charles A. Kilbourne, Administrative Officer, USMA/Laos for purposes of safekeeping in the vault of the Progress Evaluation Office in Vientiane, Laos. This action was considered necessary because of the unsettled conditions in the area at the time. On December 15, 1960 the fighting in Vientiane had increased in intensity until it appeared that the P.E.O. compound was in imminent danger of being seized by unfriendly forces. The proper authorities at P.E.O. ordered the contents of the vault destroyed for security reasons. While in the process of destroying the vault's contents, one of the two envelopes was discovered and turned over to Mr. Kilbourne who subsequently returned it to Mr. Forrester. This envelope contained 30,000 K. The other envelope, containing 50,000 K, was apparently destroyed by fire. Both envelopes were marked on the face with the value of kip inside, but Mr. Kilbourne of P.E.O. had no actual knowledge of their contents.

There is no provision in the contract which would authorize AID to reimburse T.A.I. for its loss. If any reimbursement were to be allowed pursuant to the contract, there would have to be an express authorization permitting such reimbursement. No such express authorization is to be found.

As far as any source of reimbursement outside the contract, the only possible basis would be provided by Section 635 (b), of the Foreign Assistance Act of 1961. This section reads, in part, as follows:

"Funds made available for the purposes of this Act may be used . . . for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government as may be necessary to accomplish the purposes of this Act."

Pursuant to the authority of this statute the U. S. Embassy in Laos authorized the admission of claims of U. S. Government Embassy, VOIS and USMA personnel for their personal losses due to Laotian military operations. Certain contractor personnel also apparently submitted claims for personal losses. The claims relating to AID employees and personnel of at least one AID contractor (IVS) were considered by an AID claims review board which made recommendations for reimbursement.

While it is legally possible that a contractor's business loss as opposed to the personal losses of contractor employees could be considered for reimbursement pursuant to the provisions of Section 636 (b), it should only be done after a thorough policy review. The business nature of the loss for which all contractors must assume some risk and the establishment of a precedent for further reimbursement of subsequent business losses not provided for by contract must be taken into consideration. The fact that no claim for a business loss of a contractor has ever been approved under Section 636 (b) may properly create some hesitations in deviating from established practice in the present circumstances.

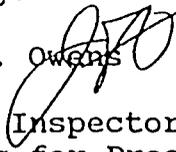
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AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

OCT 24 1991

MEMORANDUM

TO: IG/A/PSA, Coinage N. Gothard, Jr.

FROM: A-AA/FA, John F. Owens 

SUBJECT: Draft Office of Inspector General Report, Audit of
AID's Procedures for Processing Personal Property
Claims Submitted by Evacuees from Liberia and Somalia

This memorandum, with attachment, is a partial response to the draft IG Report on subject Audit sent to this Directorate, and received on October 2, 1991. At my request, the AID Office of General Counsel is preparing a formal written opinion on its position regarding the legal issues, which are at the heart of your Report. This Opinion will be forthcoming under separate cover NLT October 25, 1991. The attachment, therefore, responds to those Audit conclusions and recommendations which focus on the processing of claims vis a vis the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, and AID's own regulations.

Despite the absence in this memorandum of the GC's formal written opinion on this matter, I have been advised that the GC's office continues to maintain its view that use of Section 636(b) of the Foreign Assistance Act of 1961, as amended, to go over the \$40,000 limit in paying claims for the subject affected AID employees is clearly legal and within the "intent" of the legislation. As you know, subsequent management decisions to waive the limit and process the subject claims were based upon the careful review by the GC and our conviction that this view was correct.

I must also contest the Audit Report conclusion that AID did not follow the Claims Act and its own regulations when processing and adjudicating the subject claims. The attached comments will elaborate. In general, however, I am convinced that, in adjudicating these claims, the "requirements" of the law and our AID regulations were met. Nevertheless, I agree with the Director, Office of Administrative Services, that there appears to be an element of looseness and fuzziness in the AID regulations which does not take into account the impact of extraordinary circumstances such as existed in the Liberia and Somalia situations. For example, the regulations state that certain documentation "should" be provided to the claims

examiner. This word by its definition gives wide latitude to the claims examiner as well as to the claimant. Insistence on mandatory documentation is not possible under current regulations, and, in fact, has not historically been done. This Directorate agrees with the IG that certain documents in support of any claims "must" be available for proper adjudication. As previously mentioned to you, we are completing a rewrite of Handbook 23, which sets forth the policies and procedures for claims adjudication, and intend to have it published by the end of CY 1991. This revision will, among other things, prescribe that a list/description of any goods which may be the subject of future claims to be on file in AID/W prior to adjudication and appropriate payment.

Though I take exception to the overall conclusions of the Audit, the Audit has helped to point out a number of deficiencies in the existing regulations. These will be corrected.

Attachment:
Comments

COMMENTS
ON

Draft OIG Report, Audit of AID's Procedures
for Processing Personal Property Claims
Submitted by Evacuees from Liberia and Somalia

GENERAL COMMENTS

The Report asserts that AID did not pay claims in accordance with provisions of the Claims Act or AID Regulations. This conclusion is based upon the following:

(1) Certain information MUST be present in the claims file to prove substantiation of the claim. See page 24, para 1, 1st sentence of Draft Report.

(2) The Agency must make an assessment that possession of the property was reasonable and useful under the circumstances. See page 25.

(3) The Agency must determine that losses were not caused by negligent or wrongful acts by the claimant or an agent or employee of the claimant. See page 32.

First, under the Claims Act and implementing Agency regulations, substantiation of employee claims has never required submission of specific documentation. Regulations provide that certain information "should" be provided when and if available. Normal procedures for the claims officer is to obtain available information for substantiation. Implementing regulations take into account the fact that desired information may not always be available; this may explain the frequent, often repetitive, phrase "under the circumstances" found throughout the regulations. While acknowledging that there may be a hindsight need for "tightening up" the regulations, the existing regulations in use during the time these subject claims were adjudicated were met.

Second, the Agency does make a determination regarding the reasonableness and usefulness of the items claimed for payment, and has normally not allowed payments of excessive amounts of cash or for undocumented high value items. We do not, however, question the desirability of specific items possessed by employees for their comfort and enjoyment while assigned - frequently for many years - to difficult and stressful locations overseas. Waiving the self imposed maximum allowable amounts per item was consistent with delegated authority to do so and was judged appropriate "under the circumstances".

Finally, with regard to negligent behavior on the part of our employees, we do not presume negligent behavior by our employees when they incur losses under extraordinary circumstances such as an evacuation unless there is evidence to the contrary. As you know, each employee does, in fact, certify that all information contained in their claim is correct under severe penalty. Based on the information available to us at the time, we believe as did your Report that negligent behavior did not contribute to the losses.

SPECIFIC COMMENTS

In re Recommendation 2.1 which calls for developing "appropriate criteria for settling Liberia and Somalia evacuee claims that will fulfill the requirements of...Military Personnel and Civilian Employees Claims Act", we believe that this is unnecessary. Criteria for settling these claims were the same as those used for settling routine claims, except that various personal records generally used to substantiate ownership were asserted by the claimants to have been abandoned during the evacuations and consequently not available. These assertions were adjudged as reasonable under the circumstances.

In re Recommendation 2.2, which extends Recommendation 2.1 to completed and uncompleted claims, we respond with the same as in above paragraph.

In re Recommendation 2.3, which calls for recovering "funds from claimants for claims inappropriately settled, we completely agree that such recoveries should be pursued where determined appropriate. However, we maintain that at this point we have no evidence to conclude that such action is warranted.

In re Recommendation 2.4, which calls for "independent review of the Claims Examiners' recommended settlements", we contend that it is, in fact, the Claims Examiners' role to conduct independent reviews of claims. To have a checker checking the checker seems to lead us down a path of constantly duplicating the work of many Agency personnel, not the least of which is the apparent need to hire additional FTE. We do, however, agree that a closer review of the arithmetic of the settlement is warranted. (Note: the evidence of arithmetical errors should be put in the context of the whole; i.e, in many claims there are hundreds and hundreds of individual items which must be separately adjudicated and added to a stream of items which are subsequently summed. The opportunity for minor errors is high.)

In re Recommendation 2.5, which calls for establishing procedures which will "ensure AID employees are adequately advised beforehand with respect to political stability and personal security conditions", we find much merit and will take steps to attempt to get such advice to our employees, including working with the Office of the Inspector General which has responsibility for conducting overseas security seminars as well as with the Regional Bureaus.

In re Recommendation 2.6, which calls for procedures which will "ensure AID employees are familiar with personal loss provisions as contained in the...Claims Act...and AID Handbook 23", we strongly agree and have been working on a revision to Handbook 23 since the spring, with publication expected prior to the end of CY91.

In re Recommendation 2.7, which calls for procedures which will provide "claimants with a full accounting of their claims and require a signed settlement sheet to acknowledge resolution of their claim, we will reconsider our present procedures which give the claimant an adjudication letter clearly indicating the amount claimed, amount adjudicated, explanation of special items such as adjudicated value of a vehicle, other items allowed or disallowed, etc. Upon receipt of this letter, every claimant is offered an opportunity to file a reconsideration should he/she disagree with the adjudication.

In re Recommendation 2.8, which calls "for procedures for coordinating with the Dept of State for the identification of any AID property "lost", and upon recovery", we agree with the recommendation and its intent and will institute such procedures.

Oct. 30, 1991

NOTE FOR HERBERT L. BECKINGTON, IG

Enclosed is the GC Memorandum on
A.I.D.'s use of 636(b) authority
for claims.

It is related to the subject of
my memorandum to you dated
October 29, 1991.

A handwritten signature in black ink, appearing to read "J. Owens", written in a cursive style.

John F. Owens

Agency for International Development
Washington, D.C. 20523

Office of the
General Counsel

October 25, 1991

MEMORANDUM

TO: A-AA/FA, John F. Owens

FROM: GC/EPA, Dennis Diamond *Dennis Diamond*

SUBJECT: 636(b) Waiver

Issue: Does A.I.D. have the legal authority to reimburse 1) Agency employees and employees of Agency contractors and grantees, in excess of the \$40,000 limitation established by the Military Personnel and Civilian Employees' Claims Act of 1964, for loss of personal effects in the Somalian and Liberian disasters?

Conclusion: A.I.D. may reimburse 1) Agency employees and employees of Agency contractors and grantees, for the loss of personal effects under the broad authority of Section 636(b) of the FAA, as amended.

Facts: In 1990, civil strife and violence in the country of Liberia resulted in the emergency evacuation of A.I.D. employees. The severity of danger required all employees to abandon their personal property except carry-on luggage. In the interim, the belongings of the employees were stored in the A.I.D. compound. However, continuous violence and looting resulted in the destruction of all personal effects, including vehicles. Many A.I.D. employees lost everything they owned, well in excess of the \$40,000 government ceiling.

In addition, a similar disaster occurred in the country of Somalia. Again A.I.D. employees were forced to evacuate the premises quickly. In an effort to preserve employees' personal belongings, all goods were stored in the embassy compound. These efforts were to no avail, because widespread looting resulted in the destruction of the embassy compounds. Once again, A.I.D. employees managed to only escape with carry-on baggage and suffered personal losses well in excess of the \$40,000 government ceiling.

As of June 30, 1991, A.I.D. had received 25 claims totalling almost \$1.6 million from employees, for loss and damage to their personal property. Twenty-one of these claims have been settled

at a figure of \$1.099 million. Ordinarily, A.I.D.'s liability would have been limited to \$40,000 per claim under the Military Personnel and Civilian Employees' Claims Settlement Act of 1964. However, A.I.D. used the broad authority granted to the agency under 636(b) of the Foreign Assistance Act of 1961 to waive the limitation.

Discussion: Section 636(b) provides that:

Funds made available for the purpose of this Act may be used for compensation, allowances, and travel of personnel including Foreign Service Personnel whose services are utilized primarily for the purposes of this chapter, for printing and binding without regards to provisions of any other law, and for expenditures outside the United States for the procurement of supplies and services and for other administrative and operative purposes (other than the compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government as may be necessary to accomplish the purposes of this act.

22 U.S.C. 2396(b).

It is clear from legislative history and executive branch practice that one of the primary purposes of section 636(b) is to obviate or mitigate hardship to personnel administering foreign assistance program overseas. Thus, this unique authority that only extends to A.I.D., has recently been interpreted to permit expenditures which ordinarily are not authorized by another federal statute. For example, see the following A.I.D. General Counsel (hereinafter "GC") 636(b) opinions: D. Diamond memo of September 21, 1989 to M/SER/PPE regarding the legal authority to pay the salary of an employee of a bankrupt firm performing under contract, No. 129; L. DeSoto's memo of April 26, 1983 to AA/AFR regarding request to approve payment of administrative expenses of a bankrupt grantee, No. 112; and M.G. Kitay's memo of August 30, 1976 to GC on whether 636(b) can be used to pay an arbitration award, No. 76.

The Inspector General's Findings

The Inspector General (hereinafter "IG") conducted an audit to determine if A.I.D.'s use of 636(b) constituted a misuse of authority. As a result of this audit, the IG concluded that the use of the 636(b) waiver authority to settle the claims of A.I.D. employees was illegal. In addition, the IG determined that A.I.D. did not have the authority to pay for the losses of

employees of A.I.D. contractors and grantees on the same basis of A.I.D. employees.

The IG draws these conclusions on the sole basis of their construction of the term "compensation of personnel." They have construed "compensation of personnel" to mean the reimbursement for lost or damaged property. Under this interpretation, the IG suggests that A.I.D. has no legal basis to grant a 636(b) waiver to pay these claims for lost property since the 636(b) does not authorize funds to be used for compensation for direct hire employees.

It is our opinion that the IG's definition of "compensation of personnel" is both broad and inconsistent with common government use. To define "compensation" to include recovery for personal loss is misleading. In fact, in this context, the term is used merely for lack of a word more nearly expressing the law which permits recovery of an imponderable² and intangible thing for which there is no money equivalent.²

We have repeatedly construed "compensation" more narrowly than the IG's cited definition.³ Compensation is defined as the remuneration for services rendered, whether in salary, fees, or commissions, in other words, pay. It is not a catch-all term which includes recovery for personal losses. This definition is consistent with the plain language of 636(b). For example, the first clause of 636(b) lists the term compensation not as all-inclusive but as one of three forms of expenditures available under the Act. The legislative history of 636(b) and its antecedents indicate, in the language of 114(d), that the authority was intended to provide "general authority to use funds made available for all the various incidental expenses that will be found essential to effective operations."⁵ This language suggests that the reimbursement for a loss of personal effects would be encompassed under the section. By including the parenthetical, "other than compensation for personnel", Congress was ensuring that funds allocated under this section would not be

¹ See Draft Report, p.11 quoting Black's Law Dictionary 6th Edition (West Publishing Co., St. Paul, Minnesota, 1990.)

² Black's Law Dictionary 4th Edition (West Publishing Co., St. Paul, Minnesota, 1968.)

³ See Dennis Diamond memo of September 21, 1989. (GC Opinions: Section 636 No 129).

⁴ Blacks Law Dictionary 6th Edition (West Publishing Co., St. Paul Minnesota, 1990.)

⁵ S. Rep. No. 935, 80th Cong., 2d Sess., at 65 (1948).

expended to pay salaries. On the other hand, Congress did not intend to prohibit the expenditure of funds under this section for the loss of personal effects. GC has never construed compensation as reimbursement for lost or damaged property, and monies expended in order to reimburse A.I.D. employees and contractors for loss of personal effects cannot be viewed as compensation. Consistent with this view, we have, for example, determined that the payment of an education allowance would not be construed as compensation but as an allowance.⁶

Consequently, we believe that A.I.D. is authorized to pay these claims pursuant to the "other administrative and operating purposes" clause of 636(b).

2) It continues to be our opinion that the authority contained in 636(b) does extend to claims of employees of A.I.D. contractors and grantees.

The IG suggests that A.I.D.'s adjudication of employees of A.I.D. contractors and grantees in the same manner as its own employees goes beyond A.I.D.'s contractual obligations and is inappropriate. (See IG Draft, p. 15) Furthermore, IG stated that no legal authority or contract provisions exist that would allow A.I.D. to pay for property losses incurred by grantees or contractors.

In our view A.I.D. may reimburse employees of A.I.D. contractors and grantees for these losses under the clause that provides for the expenditure of funds

...for the procurement of supplies and services and for other administrative and operating purposes (other than the compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government...

In the first place, it is our view that the parenthetical "other than compensation of personnel" refers to direct hire employees. Thus, we believe that 636(b) can be used to authorize compensation for employees of A.I.D. contractors and grantees.⁷ Secondly, assuming arguendo, that compensation to non direct-hire individuals could not be authorized pursuant to 636(b), A.I.D. would be authorized under 636(b) to pay these claims in accordance with the "other administrative and operating purposes" clause since we do not believe that the term "compensation" in this clause is defined differently than the term "compensation" in the first clause described above.

⁶ See Jan Miller Memorandum on Educational Allowance (October 31, 1983).

⁷ See D. Diamond memo.

We believe that if A.I.D. concludes that reimbursement to both A.I.D. employees and employees of A.I.D. contractors and grantees for losses resulting from the civil unrest in both Liberia and Somalia is necessary to accomplish the purposes of the Foreign Assistance Act, such reimbursement is permissible pursuant to 636(b) notwithstanding that the Military Personnel and Civilian Employees' Claims Act provides specific remedies and limits for like claims.

Clearance:GC/EPA:JMiller JM Date: 12/29/91
GC (Acting):TGeiger TG Date: 12/29/91

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