



USAID
FROM THE AMERICAN PEOPLE

Mr. Roland Fernandes, Treasurer
United Methodist Committee On Relief (UMCOR)
475 Riverside Drive
Room 1374
New York, NY 10115

Subject: Appeal of Agreement Officer's Decision under Cooperative Agreement Number 111-A-00-01-00108-00, Sustainable Assistance to Women in Nagorno-Karabakh, with United Methodist Committee On Relief (UMCOR)

Ref: United Methodist Committee On Relief (UMCOR) Appeal of March 21, 2007

Dear Mr. Fernandes:

This is the Final Decision by USAID on the referenced Appeal of the Agreement Officer's decision to request repayment of (b)(4) under the subject Cooperative Agreement. Per 22 CFR 226.90(d), this decision shall be final. I have reviewed the information submitted with your Appeal and concluded that the decision should be upheld. Therefore, the prior decision to demand repayment of (b)(4) must be sustained. My decision in this Appeal is explained below.

In 2001, USAID/Armenia awarded UMCOR a cooperative agreement to provide sustainable assistance to women in Nagorno-Karabakh. With later modifications, it became a five-year, \$2.06 million agreement. The award itself originated from an unsolicited proposal after UMCOR applied for USAID assistance to support its existing microfinance program. UMCOR wished to expand the activities it initiated under its own Sustainable Guaranteed Agricultural Assistance For Women (AREGAK) program.

As the project completion date approached, USAID/Armenia inquired about plans for the future of the AREGAK program. UMCOR responded by reiterating a request for a funded extension of the award and emphasized the program's success. However, UMCOR also stated that, since the program had reached operational and financial sustainability, it planned to register AREGAK as an Armenian closed joint stock company. It intended that, after the registration, UMCOR would be the founder and controlling shareholder of the new, privately-held company.

When the Agreement Officer (AO) responded, he congratulated UMCOR on the success of the program and advised that USAID had prepared a modification to extend the cooperative agreement, at no cost, for three months. He explained that the extension's purpose was to give USAID sufficient time to consider the best use of the program's assets; specifically, UMCOR had advised that AREGAK had generated a (b)(4) revolving fund through the USAID grant program. UMCOR agreed and bilaterally executed the modification.

Over the course of the three-month extension, USAID/Armenia and UMCOR proceeded with winding down the project and examining options for remaining program assets. Of the (b) (4) in AREGAK's revolving fund, (b)(4) constituted program income earned, while (b)(4) was USAID funds which UMCOR had set aside to use as loan capital. The remainder represented UMCOR funds or the income its funds had earned. In addition to the (b)(4) revolving fund, AREGAK managed an outstanding loan portfolio of approximately (b)(4).

By the cooperative agreement's completion date in June 2006, UMCOR had successfully registered AREGAK as a commercial credit organization with the Central Bank of Armenia. On June 30, 2006, the AO advised UMCOR that it would be permitted to retain the (b)(4) in program income earned. However, he requested that UMCOR return the (b)(4) in unexpended USAID funds, in accordance with 22 CFR 226.71(d).

UMCOR appealed this decision in March 2007. Although your appeal does not disagree with the AO's finding that UMCOR may retain (b)(4) in program income earned, you contend that UMCOR should not have to repay (b)(4) in unobligated funds. You assert two arguments in support of retaining these funds:

- That, based on 22 CFR 226.36(e) and the definitions of "intangible property and debt instruments" and "property" in 22 CFR 226.2, title to project assets vested in UMCOR at the time of the fund transfer, and it cannot be required to return them; and
- That 22 CFR 226.71(d), requiring the return of unobligated funds to USAID, which the AO cited in his decision, does not apply in this case, because the award was fully funded, and thus amounts at issue are not unobligated cash.

I address each argument in turn.

A. Cash as Intangible Property

UMCOR contends that it took ownership of the funds at issue when USAID transferred them, and they therefore cannot be required to return those funds. You base this assertion on the definition of "intangible property and debt instruments" and 22 CFR 226.36(e), which provides that title to intangible property under an award vests in the recipient upon its acquisition.

22 CFR 226.2 states that "intangible property and debt instruments":

means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Notably, the regulation does not identify cash as a type of intangible property. Likewise, OMB Circular A-110 and other federal guidance that addresses intangible assets discuss only property which has value, but cannot be seen or touched, such as patents or data rights. Funds, in contrast, have physical existence, and would normally be regarded as tangible. This is consistent with the approach of the generally accepted accounting principles, which exclude monetary

assets from the definition of intangible assets. Cash, therefore, should not be deemed intangible property whose title has vested in the recipient.

I therefore reject UMCOR's argument that it is entitled to retain the (b)(4) as an intangible asset whose title has vested in it as the recipient.

B. Unobligated Fund Reimbursement in Award Closeout

In the AO's final decision, he cited 22 CFR 226.71(d) to request that UMCOR reimburse USAID for (b)(4) of initial loan capital. That subsection requires recipients, at award closeout, to "promptly refund any balances of unobligated cash that USAID has advanced or paid and that is not authorized to be retained by the recipient for use in other projects."

UMCOR argues that this subsection cannot serve as a basis to require reimbursement of the (b)(4). Your appeal asserts that the scope of 22 CFR 226.71(d) is limited to unobligated cash. You then cite the cooperative agreement and its modifications, which fully funded the project and listed a total obligated amount, to conclude that the award had no unobligated cash.

This misunderstands the process of obligating funds to an award. When USAID fully funded the agreement, it promised to pay UMCOR up to the (b)(4) ceiling. In turn, UMCOR was authorized, subject to the terms and conditions of the award, to obligate the funds it received for the project. The definition at 22 CFR 226.2, which you refer to in your appeal, acknowledges that "unobligated balances" are amounts that *the recipient* has not obligated.

The award explicitly made available funds for program expenditures during the period of support. Had UMCOR elected to do so, it could have expended USAID funds on AREGAK costs that were reasonable, allocable, and allowable. Since it did not, (b)(4) remained as unobligated funds at project conclusion. This is precisely the scenario 22 CFR 226.71(d) was intended to address, and the AO properly cited it in his final decision letter.

UMCOR has not demonstrated that it should not have to reimburse USAID for unobligated balances as 22 CFR 226.71 authorizes and the AO requested. I therefore reject the appeal's argument and uphold the AO's decision to demand repayment of (b)(4).

However, I also note that several years have passed since UMCOR filed its appeal. Although Treasury regulations provide for the automatic calculation of interest on amounts that remain owed 30 days after issuance of a bill for collection, I find that the delay in processing your appeal has been through no fault of UMCOR's. I therefore exercise the Agency's discretion to waive interest that would have accrued between March 2007 and the date of this letter.

DECISION

In accordance with 22 C.F.R. 226.90(d), this is the Final Decision of the Deputy Assistant Administrator for Management. I have considered your appeal and concluded that the unobligated balance of USAID funds that were left at award conclusion remain owed to the Agency.

However, I also find that, through no fault of UMCOR's, this appeal took over four years to resolve. Therefore, interest on the amounts due shall be waived.

Please remit a check to USAID in the amount of (b)(4) within 30 days of receipt of this decision. Reference the agreement number 111-A-00-01-00108-00 on the check remittance stub for our financial management section, and please include a copy of this letter with your remittance.

Regards,



Angelique Crumbly
Senior Deputy Assistant Administrator
Bureau for Management