

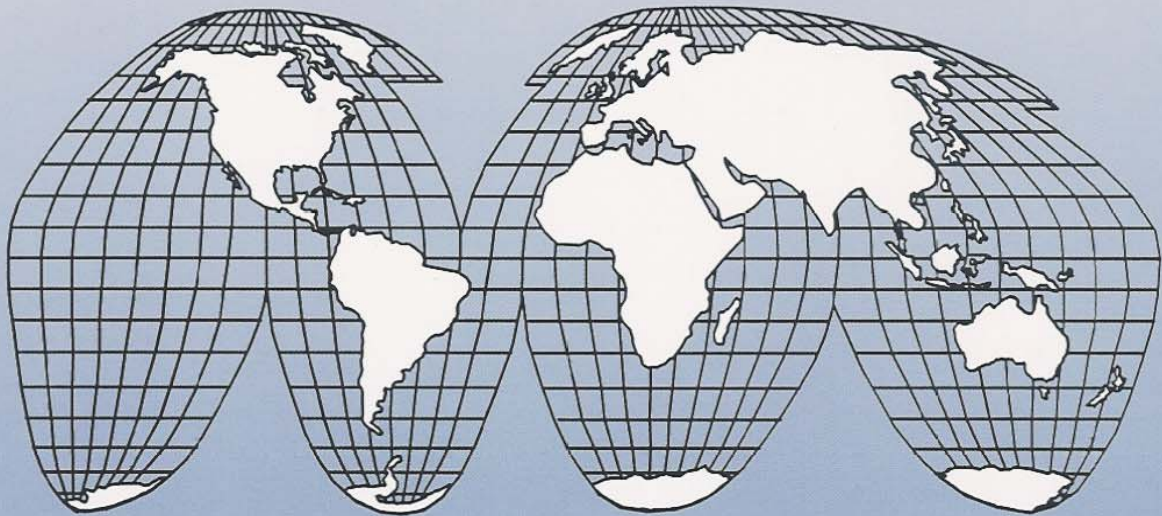
USAID

OFFICE OF INSPECTOR GENERAL

Audit of USAID/Mongolia's Participant Training Activities

Report No. 5-438-04-001-P

November 25, 2003



Manila, Philippines



November 25, 2003

MEMORANDUM

FOR: USAID/Mongolia, Jonathan S. Addleton

FROM: Acting RIG/Manila, George R. Jiron, Jr. /s/

SUBJECT: Audit of USAID/Mongolia's Participant Training Activities (Report No. 5-438-04-001-P)

This memorandum transmits our report on the subject audit. We reviewed your comments to the draft report, made some revisions based on them, and included the comments (without attachments) in their entirety as Appendix II.

This report includes seven recommendations to improve controls and strengthen USAID/Mongolia's participant training activities. Based on your comments to the draft report, we consider management decisions have been made on all seven recommendations. Final actions have been taken for Recommendation Nos. 1, 4, and 7 and can be considered closed on report issuance. For Recommendation Nos. 2, 3, 5, and 6, management decisions have been reached but final actions are pending. USAID/Mongolia should coordinate final action on Recommendation Nos. 2, 3, 5, and 6 with USAID's Office of Management Planning and Innovation.

I want to express my sincere appreciation for the cooperation and courtesies extended to my staff during the audit.

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Summary of Results

The objectives of this audit were to determine (1) whether USAID/Mongolia complied with selected requirements for administering its participant training program; (2) whether any participant trainees from Mongolia did not return from the United States and, if so, whether USAID/Mongolia took appropriate actions; and (3) what additional actions USAID/Mongolia should take to meet new participant training program requirements (see page 7).

USAID/Mongolia complied with one of the selected requirements related to the use of USAID's official participant training database. However, it did not comply with requirements that participant trainees travel on the proper type of visa (see page 8), and that appropriate records be maintained on participant trainees (see page 9).

According to Mission records, only 5 of 106 participant trainees failed to return to Mongolia (see page 11). Although it appropriately reported that the five participant trainees did not return to Mongolia, USAID/Mongolia needed to develop procedures to track participant trainees and to recover training costs from non-returnees (see page 12).

To meet new participant training program requirements, USAID/Mongolia should (1) update its guidance governing participant training (see page 14), and (2) use Conditions of Training forms for all participant trainees (see page 15).

To help USAID/Mongolia strengthen its participant training program, we made seven recommendations addressing the items discussed in this report.

In responding to our draft report, the Mission stated it agreed with the seven recommendations. The Mission provided an opinion from its Regional Legal Advisor concluding there is no legal basis for recovering \$135,552 in training costs from the two non-returnees. We consider management decisions have been made on all seven recommendations. The Mission's comments (without attachments) are included in their entirety in Appendix II (page 21).

Final actions have been taken for Recommendation Nos. 1, 4, and 7. For Recommendation Nos. 2, 3, 5, and 6, management decisions have been reached but final actions are pending.

Background

Each year USAID's participant training programs send approximately 6,000 people to the United States.¹ According to USAID, "participants" are host country residents or foreign nationals taking part in a structured learning activity. Participant training is considered as either short-term or long-term (9 months or more) and it encompasses a range of learning activities such as study tours,

¹ Participant training can also be conducted in-country or in a third country.

conferences, and academic training. These activities expose participant trainees to outside expertise and ideas that can be exported back to their home countries for developmental purposes. Participant training sponsors (USAID and its missions) have the choice of managing training or arranging for training to be conducted by a host country non-governmental organization or private voluntary organization. USAID collects and reports data on its participant trainees through its Training Results and Information Network (TraiNet) database.

As a result of homeland security concerns, increased attention is being given to all visitors to the United States—including participant trainees. For example, new regulations by the Immigration and Naturalization Service (INS) and the Department of State established more specific procedures for issuing J-1 visas, monitoring exchange visitors, and recording various status changes such as a new address. The INS also developed a database known as the Student and Exchange Visitor Information System (SEVIS) which was designed to track the status and location of all foreign students in the United States on one of three types of visas including J-1 visas. Beginning February 15, 2003, sponsors were required to feed into SEVIS data requests for J-1 visa applications.

To implement these changes, USAID, in April 2003, published a document titled *The Complete Guide-USAID Visa Compliance*. This guidance instituted more centralized control over USAID's participant training activities. Under the new process, each participant trainee's sponsor enters information for the J-1 visa application into TraiNet. The information in TraiNet is automatically fed into USAID's Visa Compliance System, a secure web-based system which facilitates data interchange between TraiNet and SEVIS. The application data must be reviewed by a U.S. direct hire at the mission level and, if approved, is forwarded to USAID/Washington for submission to SEVIS.

USAID/Mongolia's participant training program is administered by a Foreign Service National employee. The employee coordinates the program with the Mission's implementing partners.² The Mission also utilizes a contractor in the United States to support and monitor participant trainees while they are in that country. In addition to sponsoring its own training activities, USAID/Mongolia provides administrative support to a centrally-funded participant training activity. The training sponsored by the Mission ranged from long-term activities such as the pursuit of academic degrees to short-term activities such as a seminar on financing housing loans. From October 1999 through May 2003, 89 participants from Mongolia were sent to the United States for training.

² Implementing partners are contractors and grantees who implement the Mission's assistance programs.

Audit Objectives This audit was conducted as part of the Office of Inspector General’s worldwide audit of USAID’s participant training activities. The audit was designed to answer the following questions:

- Has USAID/Mongolia complied with selected requirements for administering participant training conducted in the United States?
- What have been the non-returnee rates for overseas participants from Mongolia who were trained in the United States and did USAID/Mongolia take appropriate actions when participants failed to return to Mongolia?
- What additional actions should USAID/Mongolia take to meet new requirements for selecting, monitoring, and reporting on participants training in the United States?

Appendix I describes the audit’s scope and methodology.

Audit Findings **Has USAID/Mongolia complied with selected requirements for administering participant training conducted in the United States?**

In administering participant training conducted in the United States, USAID/Mongolia complied with a requirement to establish roles for personnel entering data, verifying data and approving participant training applications. However it needs to make improvements in order to have a more effective program and to comply with other requirements.

In April 2003, USAID published a document titled *The Complete Guide-USAID Visa Compliance*. The guide defined the roles that needed to be filled by Mission personnel and implementing partners to administer participant training events. There were three roles defined in the guide that were applicable to the Mission – data entry, data verification, and participant training application approval. At USAID/Mongolia, staff members were identified for and assigned to each of those roles. Additionally, the Mission appropriately assigned data entry roles to implementing partners.

However, USAID/Mongolia did not comply with other requirements related to the use of J-1 visas and maintaining complete participant training records. The following sections discuss the areas where USAID/Mongolia needs to improve its administration of participant training conducted in the United States.

Participant Trainees Did Not Travel Exclusively with J-1 Visas

Contrary to USAID policy, participant trainees from Mongolia traveled to the United States on other than J-1 visas.³ This has occurred because B visas were inappropriately sought for participant trainees.⁴ As a result, the federal government may not have tracked all participant trainees traveling or studying in the United States, and trainees did not become subject to the requirements associated with obtaining a J-1 visa.

Automated Directives System (ADS) 253.5.6(a) requires any foreign national attending a training activity in the United States, who is sponsored fully or in part with United States government funds, to enter the United States on a J-1 visa. This requirement applies to training of any length.

The audit reviewed the records for all 37 participant trainees from fiscal year 2002. Of the 37, 24 participant trainees traveled to the United States on J-1 visas. However, 13 traveled on B visas when they should have traveled on J-1 visas. The inappropriate use of B visas occurred for one or more of the following three reasons:

- Some implementing partners believed that if USAID did not pay for a participant's travel and event costs, they could not require the participant to comply with J-1 visa requirements. For example, a grantee sent six participant trainees and one staff member to a trade show in the United States. The participants paid their own travel costs. However, USAID funds paid the cost of organizing the activity and the expenses incurred by the staff member to escort the participants. Because the costs to attend the trade show were funded in part with USAID funds, the participant trainees should have obtained J-1 visas.
- USAID/Mongolia and its implementing partners believed that certain visits to the United States were for business purposes and not participant training. For example, in February 2002 a contractor sent two Mongolian government officials to attend a two-day energy conference in California. Although USAID funded the costs, the short duration and the purpose of the visit (attending a conference) led the contractor and USAID/Mongolia to believe that the visit was business travel and not participant training. Further, in this particular case, B visas were also sought because the conference was to begin in a few days and B visas could be obtained more quickly than J-1 visas.

³ J-1 visas are nonimmigrant visas issued to foreign nationals for training, such as USAID's participant training program.

⁴ B visas are nonimmigrant visas issued to persons wanting to enter the United States temporarily for business, pleasure or medical purposes.

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- Some implementing partners sought B visas for their participant trainees because they felt that the requirements for obtaining J-1 visas, such as the requirement to return to Mongolia after training and reside there for two years, were too onerous for short-term training activities.

Because of the inappropriate use of B visas, information needed to monitor the 13 participant trainees during their training was not recorded in the databases established for that purpose. As described in the next section, none of the 13 were entered into TraiNet—USAID’s official participant training database. Further, since they were not included in TraiNet, information on them would not have been fed into the Student and Exchange Visitor Information System (SEVIS) through USAID’s Visa Compliance System. Moreover, these 13 participant trainees were not obligated to abide by the requirements associated with the J-1 visa such as the two-year residency requirement as they should have been.

To ensure that all participant trainees that should be monitored are monitored and that they are subject to the appropriate visa requirements, we are making the following recommendation:

Recommendation No. 1: We recommend that USAID/Mongolia comply with USAID’s Automated Directives System requirement to obtain J-1 visas for all individuals sent to the United States for participant training.

Records of Participant Trainees Were Not Always Complete

USAID/Mongolia’s participant training records were not always complete. Participants attending training in the United States were not always reported in the monitoring database. Additionally, Mission files did not contain all participant trainee documentation required by USAID policies. This occurred for a variety of reasons including the fact that participant trainees traveled to the United States on B visas when they should have traveled on J-1 visas. As a result, the number of participant trainees was underreported and some participant trainees were not being appropriately tracked and monitored. Further, there was no assurance that participant trainees met medical, language and other requirements before traveling to the United States.

Monitoring Database Was Not Complete – Not all participant trainees from Mongolia were entered into TraiNet. According to ADS E253.5.2(e), TraiNet is USAID’s official database for tracking and monitoring participant trainees. However, the number of participant trainees in the fiscal year 2002 TraiNet report for Mongolia did not match USAID/Mongolia records. The table below compares data in the TraiNet report to a list compiled manually by Mission personnel.

**Comparison of Participant Trainee Data
(For Fiscal Year 2002)**

	J-1 visas Short-term participants	J-1 visas Long-term participants	B visas Short-term participants	Totals
TraiNet	19	5	0	24
Mission	19	5	13	37

As the table shows, the two data sources did not match because the Mission and its implementing partners did not enter into TraiNet information on participant trainees who traveled to the United States on B visas. The Mission did not do so because it believed ADS 253 did not require that B visa holders be entered into TraiNet. However, as noted on pages 8 through 9 of this report, the 13 participant trainees should have obtained J-1 visas and not B visas. Had they obtained the appropriate visa, they would have been entered in TraiNet and the two data sources would have matched. Further, although ADS 253 does not require that B visa holders be entered into TraiNet, it does not prohibit their inclusion.

As a result, USAID’s official participant training database was underreporting the number of participant trainees from Mongolia, and it was not being used to track and monitor some participant trainees who should have been tracked and monitored. We are not making a recommendation on the monitoring database because Recommendation No. 1 at page 9 of this report should resolve that issue.

Participant Training Files Were Not Complete – The Mission did not maintain all the documentation required for participants whose training in the United States was wholly or partially financed by USAID. Specifically, ADS 253.5.6 requires (1) the purchase of health and accident coverage, (2) a certification of medical eligibility except when a health and accident coverage policy has been purchased for training programs of less than 30 days, and (3) evidence of proficiency in English. Additionally, ADS E253.5.2(b) requires participants to obtain individual taxpayer identification numbers.

Contrary to the ADS requirements, the Mission either did not maintain files or maintained incomplete files for participant trainees. Of 37 participant trainees in fiscal year 2002: 24 traveled with J-1 visas and 13 traveled with B visas. For the 24 with J-1 visas, the Mission had documentation of health and accident coverage, and certifications of medical eligibility. However, none of the 24 files contained evidence that the participant trainee had obtained an individual tax identification number, and 14 did not have certifications of English proficiency. The Mission did not maintain files for the 13 participant trainees with B visas.

For the 24 participant trainees issued J-1 visas, the Mission did not ensure that its files contained all the necessary documentation for three principal reasons. First, it believed its training support contractor was responsible for maintaining some documentation for the five participant trainees who went to the United States for

long-term training. However, according to its mission order on participant training, USAID/Mongolia is the primary repository for records of past and current participant trainees. Second, the Mission did not require the 19 participant trainees who went to the United States for short-term training to obtain tax identification numbers because it believed the participants would have returned to Mongolia before being issued a number. Third, the Mission did not approve and document the waiver for the language verification requirement in the training files for the 14 short-term participant trainees.⁵

For B visa holders, the Mission did not maintain files for them because ADS 253 does not impose documentation requirements for those visas. However, as noted on pages 8 through 9 of this report, the 13 participant trainees should have been issued J-1 visas and, thus, should have been subject to the documentation requirements for such visas.

As a result of the incomplete documentation, there was no assurance that participant trainees met medical, language and other requirements before traveling to the United States.

We are not making a recommendation on the lack of training files for participant trainees who traveled to the United States with B visas because Recommendation No. 1 at page 9 of this report should resolve that issue. However, the issue of incomplete training files for the 24 participants who traveled with J-1 visas needs addressing. Consequently, we are making the following recommendation:

Recommendation No. 2: We recommend that USAID/Mongolia establish procedures to ensure that training files contain evidence of English proficiency and tax identification numbers.

What have been the non-returnee rates for overseas participants from Mongolia who were trained in the United States and did USAID/Mongolia take appropriate actions when participants failed to return to Mongolia?

The non-returnee rate for overseas participant trainees from Mongolia who trained in the United States from October 1998 through May 2003 was 5 out of 106 participants or 4.72 percent.

- Two Mission-sponsored participant trainees who traveled with J-1 visas to the United States for long-term training did not return to Mongolia.
- Three participant trainees who traveled to the United States with B visas to attend a trade show in fiscal year 2001 did not return to Mongolia. (See the

⁵ According to management comments, of the 14 participants who did not have English proficiency tests on file, 12 did not need to because they were accompanied by translators, one had an advanced degree from an English university, and another was known to have excellent English language skills.

discussion on participant trainees that did not travel exclusively with J-1 visas beginning at page 8 of this report.)

USAID/Mongolia complied with USAID policy requiring it to report all non-returnees to the appropriate USAID bureau. Although it took appropriate action in reporting the non-returnees, the Mission needs to develop procedures to track participant trainees and to seek reimbursement from non-returnees.

Procedures Needed to Track Participant Trainees and Recover Training Costs

The Mission needs to improve the procedures it uses to ensure the timely return of participant trainees to Mongolia and to track the post-training whereabouts of non-returnees. In addition, the Mission needs procedures to seek reimbursement for the training costs it incurred from participant trainees who did not return to Mongolia.

Tracking Participant Trainees – According to ADS 253.5.2(c), sponsoring units must track participant trainees for timely return to their workplace or professional setting in their home countries and continue to track their post-training whereabouts. For these tracking tasks, the Mission relied on its training contractor based in the United States. However, the contractor was not required to verify that participant trainees actually returned to their workplace or professional setting in Mongolia. With respect to non-returnees, the contractor was not required to track their post-training whereabouts. To illustrate, neither the contractor nor the Mission had current information on the whereabouts of the five non-returnees mentioned above.

Without procedures to track the timely return of participant trainees to Mongolia and the current addresses of non-returnees, the Mission will not be able to update TraiNet as required by *The Complete Guide-USAID Visa Compliance*. The Mission would also have difficulty in attempting to recover the training costs it incurred for non-returnees (see following discussion).

The Mission agreed that it could improve its procedures. For example, it is considering requiring all participant trainees to physically visit the Mission to verify their return to Mongolia. Nonetheless, we are making the following recommendation:

Recommendation No. 3: We recommend that USAID/Mongolia develop procedures in coordination with implementing partners to track participant trainees' timely return to Mongolia and to locate and track participant training non-returnees.

Recovering Training Costs – USAID/Mongolia did not seek reimbursement for the training costs it incurred for participant trainees who did not return to Mongolia to fulfill their two-year, home-residency obligation. Two of the five non-returnees signed a Conditions of Training form (Form AID 1381-6) before traveling to the United States on a J-1 visa as required by ADS 253.5.2.⁶ One of the conditions on that form requires a participant trainee to return to Mongolia immediately following training and remain for two years before attempting to immigrate to or work in the United States. However, the two participants did not return to Mongolia. As a result, USAID/Mongolia incurred \$135,552 in costs for the two non-returnees to acquire skills that were not used to benefit their home country or further USAID’s development objectives.

- A participant trainee completed a masters program at Columbia University in New York City and an internship at the World Bank in Washington, D.C. The participant trainee did not return to Mongolia immediately after completing his education and internship in June 2002. Instead, through World Bank sponsorship, he obtained a G-4 visa (a visa for officials and employees of international organizations) which allowed him to stay in the United States until June 2005. The participant trainee’s last known address was in the Washington, D.C. area. USAID/Mongolia paid \$87,193 to train him.
- A participant trainee completed a journalism program and an internship at the University of Missouri in Columbia, Missouri from August 2000 to June 2002. During his internship (February 2002), the participant trainee was granted political asylum by the Immigration and Naturalization Service. Accordingly, he did not return to Mongolia. His last known address was in Columbia, Missouri. USAID/Mongolia paid \$48,359 to train him.

USAID/Mongolia did not seek reimbursement from the two non-returnees because it did not have mission-specific policies and procedures to (1) confirm the timely return of participant trainees, (2) track non-returnees, and (3) seek reimbursement from non-returnees. To its credit, the Mission had recognized the problem; its Federal Managers’ Financial Integrity Act certification for fiscal year 2002 included a recommendation that the Mission explore options to recover funds from non-returnees. However, the Mission had not acted on the recommendation. Consequently, we are making the following recommendations:

Recommendation No. 4: We recommend that USAID/Mongolia determine whether the \$135,552 in training costs can be recovered from the two non-returnees who signed Conditions of Training forms.

⁶ The other three non-returnees who traveled on B visas paid their own travel and event costs. Therefore, there were no training costs that the Mission could recover.

Recommendation No. 5: We recommend that USAID/Mongolia develop and implement procedures to seek reimbursement of training costs from non-returnees.

What additional actions should USAID/Mongolia take to meet new requirements for selecting, monitoring, and reporting on participants training in the United States?

USAID/Mongolia should take additional actions to meet the new requirements for selecting, monitoring and reporting on participants training in the United States. Specifically, the Mission needs to:

- Update its guidance on participant training.
- Use Conditions of Training forms for all participant trainees.

In response to the new requirements, USAID uses various systems to process J-1 visa applications. First, USAID's sponsors enter information for the J-1 visa application into TraiNet. Second, information in TraiNet is automatically fed into USAID's Visa Compliance System, which facilitates data interchange between TraiNet and a third system. This third system is known as the Student and Exchange Visitor Information System, which was designed to track the status and location of all foreign students in the United States. Using this new process between February 15, 2003 and May 30, 2003, USAID/Mongolia processed 15 J-1 visa applications without experiencing major difficulties.

Mission Guidance on Participant Training Needs Updating

USAID/Mongolia had established policies and procedures for its participant training activities. This guidance, however, should be updated because its provisions on invitational travel and extended stays in the United States were not in accordance with ADS 253. This resulted in practices which did not conform to the ADS.

Invitational Travel - Mission Order No. 501, dated January 1, 2001, permits USAID-sponsored foreign nationals to use invitational travel status to attend participant training in the United States.⁷ In fiscal year 2001, eight participant trainees from the Mongolian government traveled to the United States using invitational travel status. However, ADS E253.5.2(d) prohibits the use of invitational travel status for a participant trainee going to the United States for any

⁷ The ADS defines invitational travel as authorized travel for individuals either not employed or employed intermittently in Government service as consultants or experts...and for individuals serving without pay...when they are acting in a capacity that is directly related to, or in connection with, official activities of the Government.

formal or informal learning objective, who is wholly or partly sponsored by USAID.

Extended Stays in the United States - Mission Order No. 501 also allows participant trainees traveling to the United States on J-1 visas to extend their stay in the United States beyond their training period if they hold other visas that permit them to stay longer.⁸ Thus, per the Mission Order a participant trainee could extend his stay in the United States before returning to his home country. However, this conflicts with ADS 253.5.6(a) which states that other visas (B visas) can only be used for short trips after the participant trainee has returned to his home country to fulfill the two-year, home-country residency requirement.

To ensure that USAID/Mongolia's policies and practices conform to USAID guidance, we are making the following recommendation:

Recommendation No. 6: We recommend that USAID/Mongolia update Mission Order Number 501 to bring it into compliance with Chapter 253 of USAID's Automated Directives System.

Conditions of Training Forms Need to be Completed

Some participant trainees were not informed of conditions placed on their training as required. ADS 253.5.2(b) stipulates that participant trainees should complete a Conditions of Training form (Form AID 1381-6). This form spells out commitments that the participant trainee makes by accepting training from USAID. These commitments include:

- Returning home immediately following the training and remaining for two years before attempting to immigrate to or work in the United States.
- Traveling on a J-1 visa.
- Limiting USAID's liability for medical costs.

Although the Mission required participant trainees undergoing long-term training to sign the form, six of seven participant trainees who traveled to the United States on J-1 visas for short-term training did not sign the Conditions of Training form. These participant trainees traveled to the United States in fiscal year 2003, but before May 2003. This occurred because the Mission's participant training coordinator did not know the requirement for remaining home for two years

⁸ Two situations that may extend participants' stay past the training period are: 1) when a return date after the training period is agreed to by all parties in the Conditions of Training form, and 2) if return travel is completed within a 30-day grace period following completion of the training program in the United States.

before attempting to immigrate applied to short-term training as well as long-term training.

This condition was identified during our fieldwork in May, while we were observing the Mission implementing the new visa application process. After bringing the issue to its attention, the Mission immediately required 10 participant trainees who were about to go to the United States for short-term training to sign a Conditions of Training form.

Without a signed form, participant trainees traveling on J-1 visas for short-term training in the United States may not be aware of the commitments related to their training. Therefore, we are making the following recommendation:

Recommendation No. 7: We recommend that USAID/Mongolia implement a procedure to require that all participant trainees sign the Conditions of Training form.

Management Comments and Our Evaluation

In response to our draft audit report, USAID/Mongolia provided written comments that were compiled by its Regional Controller located at USAID/Philippines. These comments are included (without attachments) in their entirety as Appendix II.

Management decisions have been reached and final actions have been taken for Recommendation Nos. 1, 4, and 7.

Regarding Recommendation No. 1, a management decision has been made and final action taken. The Mission says it will make every effort to comply though it was unconvinced that every B visa it had issued was granted inappropriately. The Mission referenced a case where a group of Mongolian business people attended a trade fair in the United States and paid their own way. In this case, however, we considered that the trade fair was for training purposes, and the event was paid in part with United States government funds. We also considered the event to be training because the Mission grantee requested visas from the United States Embassy stating the Mongolians would gain knowledge, contacts, and information from their trip. The ADS defines training as “the acquisition and application of new skills, knowledge, or attitudes.” Furthermore, according to ADS 253 guidance, individuals are considered participants if they are funded in whole or in part by USAID. USAID/Mongolia funded the grantee to facilitate the visit to the United States. Therefore, we determined the individuals to be "participants" even though they received B visas when they should have been sent on J-1 visas. The usage of the J-1 visa is particularly important these days to ensure accountability for individuals entering the United States under any USAID sponsorship. A procedure to ensure that J-1 visas are used for all individuals traveling for training to the United States is critical.

For Recommendation No. 4, the Mission provided an opinion from its Regional Legal Advisor (RLA) concluding that there is no legal basis for recovering \$135,552 in training costs from the two non-returnees who signed Conditions of Training forms. According to the RLA, the Conditions of Training form lacks a term or condition that requires trainees to reimburse USAID for training costs if they do not fulfill their agreement to return to Mongolia within the agreed upon date. In addition, the RLA provided information which the OIG may use to support a recommendation that USAID revise the language of the Conditions of Training form to make the participant personally liable to USAID for the reimbursement of all training costs if that participant does not fulfill the terms of the agreement. Because the RLA's opinion concluded there is no legal basis for recovering the training costs, a management decision has been made and final action has been taken on this recommendation.

Regarding Recommendation No. 7, the Mission agreed with the finding and implemented a procedure to ensure that all participant trainees sign the required Conditions of Training form. Therefore, final action has been taken.

Management decisions have been reached but final actions are pending for Recommendation Nos. 2, 3, 5, and 6.

As for Recommendation No. 2, the Mission accepted this recommendation and says it would make every effort to comply. The Mission said it needs to seek guidance from Washington on how to obtain tax identification numbers for short-term participants. The Mission noted that 14 participant trainees without English proficiency language tests on file did not need to take the required tests. According to the management comments, 12 participants had translators, one participant had an advanced degree from an English university, and another was known to have excellent English language skills. However, the training activity's Cognizant Technical Officer did not approve a waiver or exemption of the language verification requirement as required by ADS 253 for the 14 short-term participant trainees. While English testing may not always be necessary, the Mission needs to ensure compliance with USAID policies. A management decision has been made but final action is pending with respect to establishing procedures to ensure that training files contain evidence of tax identification numbers and English proficiency.

Regarding Recommendation No. 3, the Mission agreed with the finding, and will make every effort to comply with this recommendation. A management decision has been made; final action will take place when procedures are developed.

For Recommendation Nos. 5 and 6, the Mission agreed with the findings and plans to update its Mission Order, including adding procedures to seek reimbursement of training costs from non-returnees, once USAID updates ADS 253. Therefore, management decisions have been made, but final actions will be taken when USAID/Mongolia's Mission Order is updated.

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**Scope and
Methodology****Scope**

The Regional Inspector General/Manila conducted this audit in accordance with generally accepted government auditing standards. The fieldwork was done in Ulaanbaatar, Mongolia from May 13 through May 30, 2003.

To answer the audit objectives, we reviewed training records for participant trainees sent to the United States from October 1999 through May 2003. With respect to non-returnee rates, however, we reviewed records for the period from October 1998 through May 2003. In addition, we interviewed officials from USAID/Mongolia, the United States Embassy, and implementing partners. Where appropriate, we tested the management controls relevant to participant training activities such as the use of J-1 visas, the maintenance of participant trainee records, and the reporting of non-returnees to the appropriate United States government agencies.

Methodology

To answer the first objective, we reviewed training records for all 37 participants sent to the United States in fiscal year 2002 and pertinent USAID and mission directives and guidance. Additionally, we interviewed officials from the Mission, the Consulate Office of the United States Embassy in Mongolia, and four implementing partners carrying out participant training activities in Mongolia. Also for fiscal year 2002, we reconciled TraiNet reports on participant trainees to supporting documents maintained by the Mission and the implementing partners. The materiality threshold for a qualified opinion was a 5 percent error or noncompliance rate and the threshold for an adverse opinion was 10 percent.

To answer the second objective, we reviewed Mission records for participant trainees who did not return to Mongolia during the period from October 1998 through May 2003, and related information from the Mission's participant training support contractor in the United States. We also interviewed a former employee of a grantee and officials from the United States Embassy.

To answer the third objective, we met with officials responsible for the Mission's participant training activities and we observed the Mission implementing the new visa application process.

Setting materiality thresholds for the second and third objectives was not necessary as they were descriptive in nature.

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**Management
Comments:**



United States Agency for International Development

**Office of Financial Management
USAID/Philippines**

MEMORANDUM

DATE: November 14, 2003

TO: Mr. Bruce Boyer, RIG/Manila

FROM: Willard L. Grizzard, Regional Controller /s/

SUBJECT: Responses of USAID/Mongolia and the Regional Legal Advisor on the Draft Audit Report of USAID/Mongolia's Participant Training Activities

We are transmitting to you the responses of USAID/Mongolia and our Regional Legal Advisor to the seven recommendations presented under subject audit, as follows:

Recommendation No. 1: We recommend that USAID/Mongolia comply with USAID's Automated Directives System requirement that J-1 visas be used exclusively for individuals sent to the United States for participant training.

USAID/Mongolia's Response:

"Mission accepts this recommendation and will make every effort to comply with it. At the same time, we remain unconvinced that every B-1 visa indicated was granted inappropriately. Specifically, a case could be made that Mongolians from the business community who attended trade fairs in the US under the Washington-managed GTN program in which the Embassy played a facilitating role can plausibly be considered something under than "participant trainees" They paid their own way. Also, USAID did not fund the trade fairs in which they participated. What the USAID-funded GTN program did was to identify an appropriate trade fair and then help facilitate the visit."

Recommendation No. 2: We recommend that USAID/Mongolia establish procedures to ensure that training files contain evidence of English proficiency and tax identification numbers.

USAID/Mongolia's Response:

“Mission accepts this recommendation and will make every effort to comply with it. However, we will need to seek guidance from Washington on how to obtain tax identification numbers for short term participants.

We note that the 14 participants who reportedly did not have English proficiency language tests on file DID NOT NEED TO. If these include the 12 participants under the judicial reform program that visited the US in May/June 2002, these participants were accompanied by a Mongolia translator. Perhaps this should have been mentioned in the file. However, it should also be noted in the audit report that the presence of a translator obviated the need for English proficiency testing beforehand.

With regard to the remaining two participants that appear to be noted here, one had an advanced degree from an Australian university and the second was a senior Mongolian chosen by an Embassy selection panel for a high level Eisenhower Fellowship who was known to have excellent English language skills. Our reading of the ADS is that in at least the first case (advanced degree from English language university), an English competency test is not required.

(See 253.5.6c: “Participants require no testing and are presumed competent in English for sponsored study in the US if their secondary and post secondary education was conducted in English, or if within the five years preceding USAID-sponsored enrollment they completed an academic degree taught in the US, UK, Ireland Canada, Australia, New Zealand or another facility teaching in English deemed appropriate by the sponsoring unit.”).

Recommendation No. 3: We recommend that USAID/Mongolia develop procedures in coordination with implementing partners to track participant trainees' timely return to Mongolia and to locate and track participant training non-returnees.

USAID/Mongolia's Response:

“Mission accepts this recommendation and will make every effort to comply with it.”

Recommendation No. 4: We recommend that USAID/Mongolia determine whether the \$135,552 in training costs can be recovered from the two non-returnees who signed Conditions of Training forms.

USAID/Mongolia's Response:

“RLA John Power provided detailed input on this issue, which is available in both Ulaanbaatar and Manila. His central point is this: “There is no legal basis for recovering the \$135,552 in training costs from the two non-returnee participant trainees who signed Conditions of Training (CT)...there is no term or condition in the CT that requires the trainee to reimburse USAID for training costs in the event of a non-returnee..without such term condition, there is no legal basis for a recovery against the non-returnees.” In effect, John’s opinion is a determination that the Mission has no legal basis for seeking a reimbursement of these training costs. John goes on to list a number of recommendations related to this issue that is covered by point 5 below.”

RLA's Detailed Response:

“There is no legal basis for recovering the \$135,552 in training costs from the two non-returnee participant trainees who signed Conditions of Training (CT), form designated AID 1381-6.. That is so because there is no term or condition in the CT that requires the trainee to reimburse USAID for training costs in the event of a non-return. (For these purposes I have looked at the CT for non-returnees Bold and Gantug.).

By way of discussion, the non-returnees agreed in the CT to “return to my country without delay upon completion of my training and endeavor to utilize the training acquired under this program for the benefit of my country.” There are no terms and conditions in the CT, however, that expressly give USAID any remedies against non-returnees or others in the event of a non-return or impose any penalties upon the non-returning participant. Without such an explicit term or condition, there is no legal basis for a recovery against the non-returnees. There is no basis to infer a legal remedy or penalty from the participant’s obligation to return. Documents are always interpreted against the drafter and the drafter here is USAID. If USAID had wanted a legal remedy or penalty, standard interpretation would dictate, USAID would have drafted the CT accordingly. Moreover, funding for the participant training program is drawn from bilateral grant funds, and there is no reason to assume that a non-returning participant had an obligation to repay the grant funding when that obligation was not made express in the CT.

While, as mentioned, the funding for the training is drawn from a grant agreement entered into by and between USAID and the Government of Mongolia, there are no provisions in the grant agreement that would enable USAID to recover training costs from the Government of Mongolia in the event of a non-return.”

Recommendation No. 5: We recommend that USAID/Mongolia develop and implement procedures to seek reimbursement of training costs from non-returnees.

USAID/Mongolia's Response:

“Mission accepts this recommendation and plans to incorporate this concern into a revised Mission training order.”

RLA's Detailed Response:

“I believe that USAID should consider changing the CT to add a provision making the participant personally responsible and liable to USAID for the reimbursement of all training costs incurred by USAID in the event that the participant does not fulfill his or her agreement to return to Mongolia without delay upon completion of training and endeavor to utilize the training for the benefit of Mongolia. This would give USAID a basis to request a refund from a non-returnee and to refer the matter to the Justice Department for litigation against a non-returnee. (Note that USAID can not commence litigation on behalf of the USG. That function is reserved to the Justice Department.)

By way of discussion, this recommend change in the CT would be consistent with Agency guidance. According to the Detailed Guide for Training (ADS 253 Mandatory Reference), the “Conditions of Training must specify..Agreement to repay training costs if the participant, upon returning home, refuses any employment that was planned.” My recommendation would make the CT specify that the participant is personally responsible and liable to repay to USAID all training costs incurred by USAID in the event that the participant, for any reason, fails to return to Mongolia without delay upon completion of training and endeavor to utilize the training for the benefit of Mongolia, or the participant for any reason fails to fulfill any other term and condition of the CT.

I also believe that USAID should make a change(s) to every Stakeholder Compact. (I have looked at several Stakeholder Compacts used for later participant training. No such Compact was entered into by and among USAID, the participant and a Government of Mongolia agency or party, and sometimes by and among a USAID-financed implementer and the participant. I believe that every Compact should at least be signed by USAID, the participant and the Government of Mongolia (in addition to, as appropriate, a USAID implementer), and that every Compact should state that the participant and the Government of Mongolia are each personally and severally responsible and liable to USAID to repay to USAID all training costs incurred by USAID in the event that the participant, for any reason, fails to return to Mongolia without delay upon completion of training and endeavor to utilize the training for the benefit of Mongolia, or the participant for any reason fails to fulfill any other term and condition of the CT. This would make both the participant and the GOM equally liable to USAID. (In the event of a non-return, USAID could issue a bill of collection to the GOM for reimbursement of lost training costs upon a non-return.).

Recommendation No. 6: We recommend that USAID/Mongolia update Mission Order Number 501 to bring it into compliance with Chapter 253 of USAID's Automated Directives System.

USAID/Mongolia's Response:

“Mission accepts this recommendation and plans to revise its Mission training order. However, we are awaiting completion of this world-wide audit—as well as the updated ADS that we understand will flow from it—before doing this.”

Recommendation No. 7: We recommend that USAID/Mongolia implement a procedure to ensure that all participant trainees sign the required Conditions of Training form.

USAID/Mongolia's Response:

“Mission accepts this recommendation and will incorporate it into the new Mission order on training. In any case, this has been implemented in our training programs since the visit of the audit team.”

Attachments A and B present USAID/Mongolia's Mission Director's response and the Regional Legal Advisor's response respectively.

Please let us know if we could be of further assistance.

Attachments: as stated.

Clearance: OFM: FAlmeida (in draft)
RLA: J Power (In draft)

OFM/FMSD/Audit/Mongolia/Participant Training Audit Responses.doc
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