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United States General Accounting Office
Washington, DC 20548

B-300829

April 4, 2004

Andrew S. Natsios
Administrator
U.S. Agency for International Development

Subject: Availability of funds under 31 U.S.C. § 3721

Dear Mr. Natsios:

This responds to a request from the U.S. Agency for International Development (USAID) for our opinion on the availability of USAID appropriations to pay for damages to a car owned by a USAID employee, [REDACTED]. Letter from Shirl E. Hendley, Chief, Travel and Transportation Division, U.S. Agency for International Development, to Comptroller General David M. Walker, January 9, 2003. [REDACTED] worked at the U.S. Embassy in La Paz, Bolivia, and, while at work, parked her car in one of the Embassy's parking lots. A flood of the parking lot destroyed the car. We understand that USAID has reimbursed [REDACTED] for her loss. As explained below, we do not object to USAID using its appropriations for this purpose.

The payment of employee claims for damage to, or loss of, personal property is governed by the Military Personnel and Civil Employees' Claims Act, 31 U.S.C. § 3721. While agencies have discretion in resolving claims for payment under this act, agency discretion is circumscribed by the requirement that the settlement be in accordance with statutory criteria and applicable regulations. 62 Comp. Gen. 641, 642 (1983) (GAO does not have jurisdiction "to question another agency's settlement as long as it was made in accordance with the statutory criteria and applicable regulations"). USAID's Chief, Travel and Transportation Division, asked for our opinion to ensure that USAID's resolution complied with the statutory criteria of 31 U.S.C. § 3721 and applicable regulations.

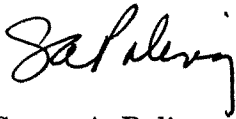
By letter of July 9, 2003, we asked for USAID's justification for reimbursing [REDACTED]. Letter from Tom Armstrong, Assistant General Counsel, GAO, to John Gardner, General Counsel, USAID, July 9, 2003. Under 31 U.S.C. § 3721, "The head of an agency may settle and pay . . . a claim against the Government . . . by an officer or employee of the agency, for damages to, or loss of, personal property incident to service." 31 U.S.C. § 3721(b). USAID General Counsel John Gardner explained that USAID had considered both State Department policy, as established in

State's Foreign Affairs Manual (FAM), and Comptroller General case law in agreeing to reimburse [REDACTED] for her damages. Letter from John Gardner, General Counsel, USAID, to Tom Armstrong, Assistant General Counsel, August 16, 2003 (Gardner Letter).

In paying this claim, USAID relied on several different provisions of the FAM which implement 31 U.S.C. § 3721. Consistent throughout these internal regulations is the conclusion that damage occurring to a privately owned vehicle as a result of natural disaster at overseas quarters constitutes a compensable claim "as damage incident to service." (Gardner Letter at 4-5.)

Accordingly, since USAID's settlement of this claim is in accordance with statutory criteria and applicable regulations, we have no objection to USAID's settlement of this claim. If you would like to discuss this issue further, please contact Tom Armstrong, Assistant General Counsel, at 202-512-8257.

Sincerely yours,



Susan A. Poling
Managing Associate General Counsel

cc: Jan Miller, Deputy Assistant General Counsel for Legislation and Policy