




Peace
Corps

OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Aaron Williams, Director

From: Kathy A. Buller, Inspector General 

Date: March 15, 2010

Subject: Management Implication Report - Peace Corps Paraguay's Inappropriate Use of Cooperative Agreements to Obligate the Government

This document identifies Peace Corps Paraguay's noncompliance with Peace Corps partnership program regulations, resulting in actions that may have violated a federal statute and risked violating the Anti-deficiency Act.

Peace Corps Partnership Program

The Peace Corps Partnership Program (PCPP) is designed to identify and accept financial donations to support, within the context of the goals of the Peace Corps, small-scale, community-initiated development projects. These projects are jointly proposed by Peace Corps Volunteers (PCVs) and their host-country community leaders to address basic needs. One type of project is a scholarship. According to the PCPP Volunteer Handbook, "Scholarship programs can be effective tools to encourage education and increase retention in secondary and high schools. While creating a scholarship program, it is important to plan strategically for the long-term administration and sustainability of the program. This process involves significant planning and the inclusion of host country nationals and local organizations." Peace Corps Volunteers serving on Women in Development and Gender and Development committees commonly submit scholarship PCPP proposals to the Office of Private Section Initiatives (OPSI) for approval.

Scholarship Projects. The Paraguay Women in Development and Gender and Development committee began developing a scholarship program in 2004. The committee chose one Volunteer each year to present the project proposal and work through the associate Peace Corps director (APCD) for education to implement the project. From 2005 to 2009, OPSI approved five PCPP scholarship projects presented by Peace Corps Paraguay Volunteers. Because of the complexity of scholarship projects, Volunteers coordinated extensively with host country nationals. The host country nationals provided support by forming selection committees, creating awareness of the program, and helping ensure sustainability. In Paraguay Volunteers coordinated with an office in the host country government and a partner organization to manage the program.

Peace Corps Paraguay Agreement. The Paraguay country director¹ and the APCD for education initially coordinated with the host country government and partner organization to begin the scholarship program that Volunteers would later fund through PCPP projects. Without prior authorization from OPSI, in May 2004, the Peace Corps country director at the time signed a five year “Inter-Institutional Cooperative Agreement” with the Paraguayan Government’s Secretary of Women and a partner organization to establish the scholarship program. According to the agreement Peace Corps was made responsible for 75% of the total program funds and the partner organization and the local government would each contribute 12.5%² of the total funds for each year of the program.³ The agreement assigned all three organizations responsibility to participate in the administration of a bank account for the program and assigned Peace Corps responsibility of monitoring the use of the funds for two years.

Noncompliance with Peace Corps Policies

The partnership program is designed for Volunteers to initiate projects and manage responsibility. Peace Corps Manual (PCM) section 720 establishes the policies and procedures for PCPP. However, by executing the scholarship agreement, the country director acted outside the scope of the PCPP program and failed to comply with PCPP requirements intended for PCVs.

The PCPP procedures ensure adequate oversight by Peace Corps Washington. Because the country director did not submit the agreement to Peace Corps Washington, OPSI was unaware of the commitment of its PCPP funds and the Office of General Counsel could not advise of the legal ramifications. In addition, the country director did not obtain an English translation of the agreement to clarify responsibilities and legal liabilities. PCM section 720.5.1.1 requires, “The PCV will work with community members to develop a written project proposal in English.” The lack of an English translation and a clause in the agreement specifying the English version as the controlling document increased the risk that the full meaning of the original agreement may not be conveyed.

PCM section 720.3.7 states, “PCVs may not commit resources before the receipt of authorized funds.” Further, the PCPP Volunteer Handbook states, “No scholarship project may last longer than the current school year.” The agreement was for a period of five years and committed the Peace Corps before receipt of authorized funds. By not following Peace Corps policies the country director may have violated the statutory requirements that the policies are based upon.

¹ James Geenon, Peace Corps Paraguay country director at the time, signed the scholarship agreement.

² As specifically noted in the agreement the contribution of the Secretariat of Women and the Paraguay non-governmental organization could take the form of human resources, technical assistance, or property.

³ The agreement was drafted and signed in Spanish. The OIG sent the agreement for translation (see attached). While the exact terms translated from Spanish to English making Peace Corps responsible for 75% of the program funds could be open to some ambiguity, the totality of the agreement and further Office of Inspector General inquiries indicates that the parties intended that the Peace Corps be responsible for 75% of the program funds.

Unauthorized Use of Donated Funds

The Peace Corps has both appropriated funds and trust funds (donations). Donations operate under trust fund rules and are not subject to all of the requirements of appropriations. Trust funds are subject to the establishing statute and the rules of the trust. The Peace Corps Act provides Peace Corps with the statutory authority to accept and retain donations (22 U.S.C. § 2509) in furtherance of the purpose of the Peace Corps Act. Peace Corps assigned this authority in relation to the PCPP to OPSI. According to PCM section 720.3.3, "OPSI is the only Peace Corps office authorized to generate support and accept donations for a Partnership project." OPSI is also responsible approving PCPP projects and creating the official Authorization Memo which serves as both the obligation and payment document.

The country director acted outside the parameters of the PCPP and inappropriately committed PCPP funds by signing the scholarship agreement. Although the cooperative agreement did not follow the required PCPP process, the agreement did reflect PCPP requirements in PCM section 720.4 which states that the community must contribute at least 25% of the total project cost. To fund the program the agreement required:

- That Peace Corps "support the management of the Program's funds in an amount equivalent to 75% of the total to be determined for each period."
- That the Secretariat of Women's Affairs of the Presidency of the Republic "support fund raising, through the Peace Corps Partnership Project, and provide a counterpart contribution amounting to at least 12.5% of the total funding, to be distributed in each period, which may take the form of human resources, technicians, use and enjoyment of physical facilities, or others."
- That the partner organization "support fund raising, through the Peace Corps Partnership Project, and provide a counterpart contribution amounting to at least 12.5% of the total funding, to be distributed in each period, which may take the form of human resources, technicians, use and enjoyment of physical facilities, or others."

Because the country director was not authorized to obligate donated funds the scholarship agreement created an unauthorized obligation of PCPP funds.

Failure to Record Obligation

According to the Government Accountability Office (GAO) "Principles of Federal Appropriations Law,"

The federal government generally operates on an obligation basis. This means that an agency first takes some action that creates the legal liability to pay--that is, the agency "obligates" itself to pay--and the actual disbursement of money typically follows at some later time. An agency can incur a legal liability, i.e., a claim that may be legally enforced against the government, in a variety of ways,

such as by signing a contract, grant or cooperative agreement, or by operation of law. *Collins v. United States*, 15 Ct. Cl. 22 (1879).

The agreement created a legal liability of the Peace Corps to pay for the scholarship program and therefore should have been recorded as an obligation in the accounting records. According to 31 U.S.C. § 1501 an amount shall be recorded as an obligation of the U.S. Government only when supported by documentary evidence. Three of the nine types of evidence discussed in the law are:

- a binding agreement between an agency and another person (including an agency) that is (A) in writing, in a way and form, and for a purpose authorized by law; and (B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided.
- grant or subsidy payable from appropriation made for payment of, or contributions to, amounts required to be paid in specific amounts fixed by law or under formulas prescribed by law.
- other legal liability of the Government against an available appropriation or fund.

Although the scholarship agreement did not specify the amount of money for the program, the cost should have been estimated. GAO “Principles of Federal Appropriation Law” states, “The precise amount of the government’s liability should be recorded as the obligation where that amount is known. However, where the precise amount is not known at the time the obligation is incurred, an obligation amount must still be recorded on a preliminary basis.”

The scholarship agreement created a legal obligation of the federal government. However, neither the post nor OPSI obligated the estimated amount of funds based on this agreement. OPSI was not fully informed of the agreement because the country director did not involve it or other management in the formation of the agreement. As a result, the country director obligated the government without properly establishing the obligation.

Potential Anti-deficiency Act Violation

Legal Requirements. To prevent the federal government from entering into a legally binding agreement that it may not be able to pay, the law requires agency’s to establish administrative control of funds to ensure obligations do not exceed available funding. Various statutes address this issue:

- Title 31 U.S.C. § 3324 prohibits involving the government in any contract or other obligation for the payment of money for any purpose in advance of public funds made for such purpose, unless the contract or obligation is authorized by law.

- The Anti-deficiency Act (31 U.S.C. § 1341(a)(1)) states “An officer or employee of the United States Government or of the District of Columbia government may not—
 - (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or
 - (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”
- Title 31 U.S.C. § 1517(a) states, “An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding - (1) an apportionment; or (2) the amount permitted by regulations prescribed under section 1514(a) of this title.”

Although the donated funds are not appropriated through an act of Congress, they are considered public funds and are subject to federal statutes including the Anti-deficiency Act. The GAO “Principles of Federal Appropriations Law” quotes Comptroller General Decisions in stating, “[F]unds available to agencies are considered appropriated, regardless of their source, if they are made available for collection and expenditure pursuant to specific statutory authority. See B-215042, April 12, 1985. This means that although donated funds may not be subject to all the restrictions applicable to direct appropriations, they are still public funds. See B-197565, May 13, 1980.” The federal statutes cited above apply to all public funds.

Federal Regulations. The Office of Management and Budget Circular A-11 states, “All Anti-deficiency Act violations must be reported. Here are some common examples: If you authorize or make an obligation exceeding:

- In an appropriation or fund. This may include obligations for purchases of goods or items that are prohibited by statute.
- In an apportionment or reapportionment (a type of administrative subdivision of funds), such as a category B apportionment. This also includes incorporated footnotes.
- In an allotment or a suballotment (a type of administrative subdivision of funds).
- In any other administrative subdivision of funds, if the overobligation results in the overobligation of one of the previous amounts.”

Peace Corps Administrative Control of Funds. According to PCM section 704, “Administrative Control of Funds,” Peace Corps has available to it two trust fund accounts: “Gifts and Contributions,” and “Advances from Foreign Governments.” These funds are controlled through allotments and administrative budget advices issued by the Chief Financial Officer. The allotment for OPSI Private Sector Funds is controlled

within the treasury account 11X8245, which includes all donations other than from foreign governments. Peace Corps further controls donations through sponsor codes. PCPP funds are a suballotment maintained in sponsor code 1005.

The process for obligating OPSI funds for PCPP are detailed in PCM section 720, which states:

- OPSI will review the proposal, in coordination with the CD [country director] if necessary, and give final approval. Upon final approval, OPSI will market and identify funding sources for the project.
- OPSI may receive contributions by credit card, check, or cash. The Office of Chief Financial Officer (OCFO) is responsible for receiving and depositing credit card, check and cash donations.
- When all funds for a project have been received by the Agency, OPSI will create an Authorization Memo which serves as both the obligation and payment document. The memo is provided to the OCFO which obligates the funds and initiates the payment to the PCV.

For the country director to have violated the Anti-deficiency Act would require the amount of the obligation incurred by the scholarship agreement to exceed the unobligated balance of the PCPP suballotment (account code 11X82451005). ***Because the agreement did not specify the amount or the number of scholarship recipients, the country director increased the risk of inadvertently exceeding the available funds and creating an Anti-deficiency Act violation.*** Without determining the expectations of the local government and the Peace Corps at the time of entering the agreement, it is impossible to provide a precise estimate of the obligation. For our calculation, we used the actual amount of partnership funds spent over the five years (\$42,344) when comparing the amount to PCPP suballotment balance.

Because PCPP funds were subsequently obligated as PCV projects, the remaining unobligated amount of the scholarship agreement decreased each year. The following displays the amount of unobligated funds for the scholarship agreement compared to the suballotment fund balance.

Month/Year	Unobligated Amount of the Scholarship Agreement	OPSI Private Sector PCPP Fund Balance
May 2004	\$42,344	\$192,488
May 2005	\$36,435	\$155,109
December 2005	\$30,000	\$156,811
November 2006	\$20,000	\$208,311
August 2007	\$10,000	\$368,911
April 2009	\$ 0	\$480,551

The country director's actions circumvented Peace Corps policies for the administrative control of funds and risked creating an Anti-deficiency Act violation. However, OPSI

maintained sufficient fund balance to avoid an Anti-deficiency Act violation and its subsequent approval and accounting of PCVs partnership projects appropriately recorded the obligations after receiving donations.

Conclusion

The previous Paraguay country director did not comply with Peace Corps policy regarding partnership funds and the administrative control of funds. His actions resulted in a violation of 31 U.S.C. § 1501 requiring the recording of obligations and risked causing an Anti-deficiency Act violation. In addition, not following PCPP procedures may have been a contributing factor to the alleged conversion of Peace Corps funds by one of the parties of the agreement. This case is under review by a United States Attorney's Office for possible criminal prosecution.

Country directors often enter into agreements with host countries and non-governmental agencies. However, without sufficient legal expertise country directors may inadvertently violate laws or administrative regulations. According to numerous statutes, Anti-deficiency Act violations carry administrative penalties and may have criminal penalties including fines of not more than \$5,000, imprisonment for not more than 2 years, or both. Therefore, it's imperative that Peace Corps inform country directors of the risks of entering into cooperative agreements without fully understanding the legal and accounting implications. Further, Peace Corps should increase oversight and monitoring of post's cooperative agreements by requiring the Office of General Counsel and other management involvement in their development.

Please feel free to contact me if you have questions, issues of concern, or would like to have a discussion on this matter.

Attachment: INTER-INSTITUTIONAL COOPERATION AGREEMENT, translation provided for the Office of Inspector General

[logo] Peace Corps

[logo] UPEJ

[logo] Secretariat of Women's Affairs
[illegible]
Let's build the new Paraguay!

INTER-INSTITUTIONAL COOPERATION AGREEMENT

By means of this **INTER-INSTITUTIONAL COOPERATION AGREEMENT**, the *Secretariat of Women's Affairs of the Presidency of the Republic*, represented by *Minister María José Argaña*, the *Peace Corps Technical Cooperation Agency of the United States Government*, represented by *Mr. James Geenen*, National Director, and for the other party the *Union of Young Professionals and Entrepreneurs of Paraguay (UPEJ)*, represented by its President, *Ms. Miriam Núñez*, and *Ms. Maura Pacua Ortiz*, its Secretary General, agree to enter into this **COOPERATION AGREEMENT**, which shall be governed by the following clauses:

FIRST CLAUSE: Purpose

The purpose of this **COOPERATION AGREEMENT** is to establish among the parties *a scholarship program for needy young women* from Paraguay, to provide them with *technical and financial assistance* and enable them to continue with their secondary education, pursue a vocational training program, or study at the tertiary or university level, and in the future, participate in other programs at the Regional or International level.

The agreements and procedures that shall govern this Agreement shall be defined in its exhibits.

SECOND CLAUSE: The parties' undertakings

The Peace Corps undertakes to:

1. Provide technical support for the Scholarship Program's implementation.
2. Support the management of the Program's funds in an amount equivalent to 75% of the total to be determined for each period.
3. Actively participate in the design of the program's materials and its promotion and dissemination; select the beneficiaries, jointly *with the other organizations named or other specialized organizations deemed appropriate* for granting scholarships, monitoring the use of the funds, and follow-up during the next two years, through the *Volunteer(s) assigned* in the communities.
4. Participate, through representatives, in the joint management of the funds, through a bank account opened to that end, which would be subject to the joint signatures of the two national organizations, i.e., the **Secretariat of Women's Affairs of the Presidency of the Republic (SMPR)** and the **Union of Young Professionals and Entrepreneurs of Paraguay (UPEJ)**.
5. *Provide training, motivation, and follow-up for the scholarship holders.*

The Secretariat of Women's Affairs of the Presidency of the Republic undertakes to:

1. Support fund management, through the **Peace Corps Partnership Project**, and

.../...

provide a counterpart contribution amounting to at least 12.5% of the total funding, to be distributed in each period, which may take the form of human resources, technicians, use and enjoyment [*usufruct*] of physical facilities, or others.

2. Actively participate in the design of the program's materials; its promotion and dissemination; the joint selection of beneficiaries; approval of the scholarships; monitoring and follow-up.
3. Participate through representatives in the joint management of the funds through a bank account opened to that end, in accordance with the procedure to be prescribed in an exhibit.
4. Provide training, motivation, and follow-up for the scholarship holders.
5. Write the quarterly and annual technical and programmatic reports for the Program.

The Union of Young Professionals and Entrepreneurs of Paraguay (UPEJ) undertakes to:

1. Support fund management, through the **Peace Corps Partnership Project**, and provide a counterpart contribution amounting to at least 12.5% of the total funding, to be distributed in each period, which may take the form of human resources, technicians, use and enjoyment [*usufruct*] of physical facilities, or others.
2. Actively participate in the design of the program's materials; its promotion and dissemination; the joint selection of beneficiaries; approval of the scholarships; monitoring and follow-up.
3. Participate with representatives in the joint management of the funds through a bank account opened to that end.
4. Provide training, motivation, and follow-up for the scholarship holders.
5. Write the quarterly and annual financial reports for the Program.

THIRD CLAUSE: Form of performance of actions

The corresponding exhibits shall be progressively signed to establish the Program's operating procedures, which shall be implemented jointly by the parties. Other organizations may be integrated into the Program's execution by mutual agreement of the parties

FOURTH CLAUSE: Construction of the Agreement

Good faith shall always prevail in the construction and application of the Agreement, and any disputes that may arise shall likewise be resolved in good faith. If one of the parties fails to fulfill its commitments without just cause, this Agreement shall be rendered void. This Agreement does not exclude signing bilateral agreements between institutions which are party hereto and other public and/or private entities for the promotion of education for young women.

.../...

FIFTH CLAUSE: Rescission of the Agreement

Either party may rescind this agreement with 30 days' advance notice. In that event, the follow-up and reporting on the previously approved scholarships must be concluded.

The withdrawal of one of the parties does not imply the program's cessation; the other parties remain at liberty to choose and include other organizations which express the same interest in participating and committing themselves.

SIXTH CLAUSE: The Agreement's duration is established for a term of five years. The Exhibits shall be reviewed periodically to better update them as to the conditions of the corresponding period.

SEVENTH CLAUSE: The parties' consent

The parties' consent hereto is agreed upon on the **fifth day of May, two thousand four**, in the city of Asunción, by hereby signing three counterparts of the same tenor and effect.

[signature]
Miriam Núñez
President
UPEJ

[signature]
María José Argaña Mateu
Minister
Secretariat of Women's Affairs

[signature]
Maura Pacua Ortiz
Secretary General
UPEJ

[signature]
James Geenen
National Director
Peace Corps - Paraguay

[Pages 1 and 2 contain handwritten marginal notations and initials. The marginal notations on page 1 say "monitoring" and "use of fonts".]