

5/22/00

SUBJ: THIRD PARTY FUNDING OF TECHNICAL ASSISTANCE TO FOREIGN AVIATION AUTHORITIES

1. **PURPOSE.** This order establishes agency-wide Federal Aviation Administration (FAA) policy on third party funding of FAA technical assistance to foreign aviation authorities.
2. **DISTRIBUTION.** This order is distributed to the director level in Washington, regions, and centers with a division level distribution in the Offices of Aviation Policy and Plans, Environment and Energy, International Aviation, Europe, Africa, and Middle East, Latin America-Caribbean, Asia-Pacific, Chief Counsel, Accident Investigation, Aircraft Certification, Aviation Medicine, Rulemaking, Acquisitions, Airport Planning and Programming, Airport Safety and Standards, Civil Aviation Security Intelligence, Civil Aviation Security Operations, Civil Aviation Security Policy and Planning, Budget, and Financial Management; in the Air Traffic, Airway Facilities, Flight Standards Services, Regional Flight Standards Divisions and Flight Standards Field Offices and Flight Standards Services; to the division level in the regional Flight Standards Divisions and the Regional Counsel; and a limited distribution to all Flight Standards Field Offices.
3. **BACKGROUND.** The FAA has conducted the International Aviation Safety Assessment (IASA) program since 1992. More recently, the FAA has supported the International Civil Aviation Organization (ICAO) Universal Safety Oversight Audit Programme. Both the IASA and the ICAO Universal Safety Oversight Audit Programme assess the ability of a contracting State to the Chicago Convention to adhere to ICAO safety requirements set forth in the Chicago Convention and the ICAO Annexes that set forth ICAO Standards and Recommended Practices. This, in turn, has generated interest by many ICAO member States in obtaining technical assistance, including the provision of training for the personnel of their civil aviation authorities in the administration of civil aviation safety. Such interest is also expressed by many non-governmental organizations that view an overall increase in the competence of civil aviation safety authorities as beneficial to the development of commerce by improving the safety of air transportation operations and infrastructure in many regions of the world. The FAA views this non-governmental interest in the improvement of aviation safety as highly positive. For this reason, the FAA strongly supports non-governmental expressions of interest in the provision of financial support for FAA technical assistance, including training, to foreign civil aviation authorities.
 - a. The FAA will continue to provide technical assistance to foreign governments, including the training of their personnel, pursuant to 49 U.S.C. § 40113(e). Under 49 U.S.C. § 40113(e)(2), the FAA must seek reimbursement for the cost of providing such training from governments capable of providing such reimbursement. Unfortunately, many of the governments most in need of such assistance cannot afford to reimburse the FAA. In such cases, the Administrator has limited authority to waive reimbursement. Waiver of reimbursement, with its budgetary impact, limits the ability of the FAA to provide technical assistance.
 - b. In 1996, the Congress enacted Section 226 of the FAA Reauthorization Act (P.L. 104-264, 110 Stat. 3213, 3233, now 49 U.S.C. § 106(l)(6)). This law authorizes the FAA to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the FAA. Moreover, the Administrator may enter into such agreements with any person, firm, association, corporation, or educational institution, on such terms as the Administrator may consider appropriate. 49 U.S.C. § 106(l)(6) provides statutory authority for the FAA to enter into agreements with non-governmental donor entities that wish to provide funding for FAA technical assistance to countries needing such technical assistance.

4. POLICY.

a. Policy Statement. The FAA may enter into agreements with non-governmental donor entities that wish to provide funding for FAA technical assistance to foreign civil aviation authorities, including the provision of training for civil aviation authority personnel. The FAA, at its discretion, shall determine whether it will enter into such an agreement. This discretion shall be exercised in a manner that comports with the best interests of the FAA. Such agreements shall have a contractual format and employ irrevocable international or domestic letters of credit and, except for certain basic elements, shall be of a form and substance arrived at through negotiation between the FAA and the non-governmental donor entity. Whatever form and substance the agreement may take, the following elements will be present:

(1) An underlying agreement between the FAA and the government whose civil aviation authority is to be provided technical assistance;

(2) An underlying agreement between the non-governmental donor entity and the government whose civil aviation authority is to be provided technical assistance;

(3) An irrevocable letter of credit agreement between the non-governmental donor entity and an issuing and/or confirming bank benefiting the FAA that is independent of the agreements described in (1) and (2); and

(4) The documents governing the release of funds to the FAA under the irrevocable letter of credit shall be described in the agreement between the FAA and the non-governmental donor entity.

b. The Irrevocable Letter Of Credit. The irrevocable international or domestic letter of credit provides an appropriate financial vehicle for FAA agreements with non-governmental donor entities interested in providing financial support for FAA technical assistance to third-party nations. The international or domestic irrevocable letter of credit facilitates the transfer of funds and provides an independent and stable accounting arena that allows the FAA to know that specific funds are in place prior to the commencement of the technical assistance. Thus the use of irrevocable letters of credit allows the FAA to meet the requirements of the Antideficiency Act (31 U.S.C. § 1341). The form of an agreement between the FAA and a non-governmental donor entity benefiting a third-party nation will be determined through negotiation. The specific form of an irrevocable letter of credit contemplated in such an agreement may be based upon the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit, the International Chamber of Commerce Uniform Customs and Practice on Documentary Credits (UCP 500), and/or Article 5 of the Uniform Commercial Code (UCC).

c. Implementation. The FAA anticipates that a number of factors will require the maximum use of flexibility and discretion in the formation of an irrevocable letter of credit. Some factors that will dictate the form that an agreement and its irrevocable letter of credit might take include:

(1) The variability of the contexts in which a non-governmental donor entity might provide assistance;

(2) The scope of the assistance that might be provided;

(3) The breadth of subject matter that might be addressed; and

(4) The degree of security that a non-governmental donor entity or the FAA might require respecting the transfer of funds.

d. Additionally, the form of an agreement between a non-governmental donor entity and a third-party government may dictate the form of the letter of credit contemplated in an agreement between the FAA and the non-governmental donor entity. Although the FAA may refer to the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit, UCP 500, and/or Article 5 of the UCC as guides to formulating a

letter of credit agreement, the FAA will exercise its discretion to the limits allowed by federal law in reaching that agreement. Thus, there will be no rigid format to follow at the outset of negotiations. Appendix I, Sample Cooperative Agreement, sets forth an example of an agreement using an irrevocable letter of credit. The Sample Agreement is between the FAA and a fictitious donor entity, the Aviation Safety Foundation of East Asia, and benefits training for the civil aviation authority personnel of the imaginary Republic of Shangri-La. The Sample Agreement contains provisions that might be considered in the formulation of a specific agreement. The FAA will use prior agreements as guidelines to subsequent agreements only to the extent that such prior agreements promote efficiency in the negotiation process.

e. Non-governmental donor entities should initiate the formulation of any agreements with a third-party government prior to initiating formal negotiations with the FAA concerning an agreement using letters of credit. The third-party governments should either negotiate a technical assistance agreement with the FAA or have a technical assistance agreement in place prior to a non-governmental donor initiating letter of credit negotiations with the FAA. There is no prohibition to either a non-governmental donor entity or a third-party government consulting with the FAA prior to the formulation of any of the agreements. However, consultations with the FAA shall have no force until agreements are in place between the non-governmental donor entity and the third-party government and between the third-party government and the FAA.

5. RESPONSIBILITIES.

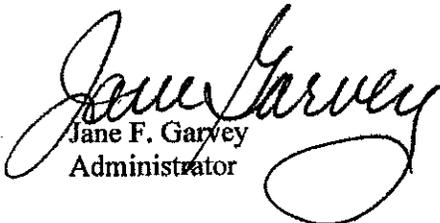
a. The Assistant Administrator for Policy, Planning, and International Aviation (API-1) is responsible for the overall management of FAA agreements with non-governmental donor entities based on irrevocable letters of credit.

b. The Office of International Aviation (AIA), in coordination with the API Budget and Financial Management Staff (API-18), shall develop and negotiate FAA agreements with non-governmental donor entities based on irrevocable letters of credit.

c. The Assistant Chief Counsel, International Affairs and Legal Policy Staff (AGC-7) in the Office of the Chief Counsel shall advise and participate in the negotiation and formulation of FAA agreements with non-governmental donor entities based on irrevocable letters of credit and shall advise AIA and API-18 during the course of the execution of such agreements.

d. FAA International Area Offices, Flight Standards International Field Offices, and other FAA units, in coordination with AIA and API-18 and with the appropriate Washington headquarters offices of their respective organizations, may conduct liaison with overseas non-governmental donor entities and foreign governmental organizations concerning FAA agreements with non-governmental donor entities based on irrevocable letters of credit.

e. Other FAA organizations are authorized to work with the organizations set forth in paragraphs 5a through 5d and will execute those technical portions of each such agreement that involve their areas of responsibility.


Jane F. Garvey
Administrator

**APPENDIX 1. SAMPLE COOPERATIVE AGREEMENT
CA-085**

BETWEEN

**FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA**

AND THE

AVIATION SAFETY FOUNDATION OF EAST ASIA

WHEREAS, the Federal Aviation Administration (FAA) of the Department of Transportation of the United States of America and the Aviation Safety Foundation of East Asia (ASFEA) have as a common purpose the promotion and development of the education and training of government civil aviation safety personnel in the Republic of Shangri La; and,

WHEREAS, the Administrator of the FAA is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions with any person, firm, association, corporation, or educational institution, on such terms as the Administrator may consider appropriate, and as may be necessary to carry out the functions of the Administrator and the FAA in furthering the interests of aviation safety; and

WHEREAS, such cooperation will encourage the development of safety of air commerce in the United States and abroad;

NOW THEREFORE, the FAA and ASFEA, collectively referred to herein as the Parties, agree to the procedure set forth in this Cooperative Agreement (CA) for the establishment of irrevocable letters of credit in accordance with the following terms and conditions:

ARTICLE I—OBJECTIVE

A. This CA establishes the terms and conditions for mutual cooperation between the Parties in the establishment of irrevocable letters of credit between them to assist the Civil Aviation Directorate of the Republic of Shangri La in training its personnel to enable the Civil Aviation Directorate to more efficiently achieve and maintain compliance with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO).

B. The purpose of the irrevocable letters of credit established under this CA is to enable ASFEA to transfer funds from ASFEA to the FAA as reimbursement to the FAA for the costs incurred in training the personnel from Civil Aviation Directorate of the Republic of Shangri La.

ARTICLE II—IMPLEMENTATION

A. The Parties agree that each "undertaking" shall be an irrevocable Letter of Credit formulated, construed, and interpreted under principles which may be set forth in the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit (1996); the current Uniform Customs and Practice on Documentary Credits (UCP 500) of the International Chamber of Commerce; and/or Article 5 of the Uniform Commercial Code (UCC), as these references are used or relied upon in any letter of credit negotiated between the Parties to this CA. Any changes made in the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit (1996), UCP 500, and/or Article 5 of the UCC subsequent to the initiation of this CA shall be incorporated into this CA by agreement of the parties. The failure of one of the parties to agree to any such change shall not alter or affect the intent or working of the CA, and shall not constitute agreement to terminate any existing undertaking pursuant to this CA.

B. The Parties agree that each undertaking made under this CA shall address only the objectives set forth in Article I hereto, and if the Parties agree to use similar undertakings for other purposes, the Parties shall originate and agree to a new CA.

C. The Parties agree that the funds to be designated by ASFEA under this CA shall be determined by and be the subject of an agreement between ASFEA and the authorities of the Republic of Shangri La that is separate from and independent of this CA.

D. The Republic of Shangri La, through its designated authorities, shall have a Memorandum of Agreement in place with the FAA for the training of personnel of the Civil Aviation Directorate of the Republic of Shangri La prior to the commencement of any transaction under this CA.

E. Letters of credit originated under this CA shall reflect the agreement made between ASFEA and the Republic of Shangri La and may take, but are not limited to, the following forms:

1. a one-time specific grant for a specified training activity;
2. a designated amount that may be used over a period of time for training activity; and/or
3. an open account to a stated limit to be used as needed.

ARTICLE III—PAYMENT REQUIREMENTS

A. With respect to the undertakings made pursuant to this CA, the Parties agree that:

1. ASFEA is to be referred to as the "Applicant" for each Letter of Credit and shall place funds in United States Dollars [\$ or USD] into an irrevocable Letter of Credit in the financial institution of its choice. The financial institution designated by ASFEA, as Applicant, is referred to as the "Issuing Institution." The Issuing Institution shall be identified by ASFEA as follows:

- a. Name of the Issuing Institution;
- b. Issuing Institution's employee responsible for the Letter of Credit;
- c. Postal Address of the Issuing Institution;
- d. Electronic address of the Issuing Institution and of all persons responsible for the Letter of Credit;
- e. Identification of the account(s) associated with the Letter of Credit; and
- f. Telephone and facsimile numbers for the Issuing Institution.

2. The FAA is to be referred to as the "Beneficiary" of each Letter of Credit and shall designate a financial institution of its choice. The financial institution designated by the FAA shall be referred to as the "Confirming Institution." The Confirming Institution shall be identified as follows:

- a. Name of the institution acting as Confirming Institution;
- b. Confirming Institution's employee responsible for the Letter of Credit;
- c. Postal Address of the Confirming Institution;
- d. Electronic addresses of the Confirming Institution and of all persons responsible for the Letter of Credit;
- e. Identification of the account(s) associated with the Letter of Credit; and
- f. Telephone and facsimile numbers for the Confirming Institution.

3. ASFEA and the FAA may agree to use a single financial institution to perform the functions of both the Issuing Institution and the Confirming Institution. If a single institution is so agreed, all reference to "Confirming Institution" shall be construed as referring to the Issuing Institution.

4. ASFEA, as Applicant, shall notify the FAA, as Beneficiary, of the amount of money that has been placed into the irrevocable Letter of Credit, identify the Issuing Institution to the FAA, and forward to the FAA a copy of the agreement between ASFEA and the Republic of Shangri La identified in paragraph II D.

5. Upon notification by the Applicant, the FAA, as Beneficiary, shall identify to ASFEA the financial institution acting as Confirming Institution.

6. The FAA shall deliver to the ASFEA, as Applicant, and to the Issuing Institution and the Confirming Institution as agreed by the Parties, copies of the documents that shall underlie all transactions made under Letters of Credit established during the course of this Cooperative Agreement. The Parties agree that these documents shall be the following:

- a. The Memorandum of Agreement between the FAA and the Civil Aviation Directorate of the Republic of Shangri La under which training is to be provided to personnel of Civil Aviation Directorate of the Republic of Shangri La;
- b. Any and all Annexes or Appendices to the Memorandum of Agreement between the FAA and the Civil Aviation Directorate of the Republic of Shangri La that specifically address the training to be provided to personnel of the Civil Aviation Directorate of the Republic of Shangri La that is the transaction underlying the issuance of any Letter of Credit.

7. Upon receipt of the items specified in paragraph III A. 6., above, ASFEA shall instruct the Issuing Institution to notify the Confirming Institution that the specific Letter of Credit is operative. In the alternative, the Issuing Institution may transfer the funds to the Confirming Institution. The Confirming Institution shall notify the FAA, as Beneficiary, and ASFEA upon notification of the issuance of the specific Letter of Credit or upon the receipt of the funds from the Issuing Institution.

8. The Issuing Institution or the Confirming Institution, as the holder of the specific Letter of Credit or as the recipient of funds supplied by ASFEA, shall release funds to the FAA upon receipt of the specific FAA Training Agreement Memorandum that shall be used by the FAA to identify a specific commitment to the training of identified personnel from the Civil Aviation Directorate of the Republic of Shangri La and that also identifies the cost of such training.

B. The designated offices for the coordination and management of this CA and its Annexes and Appendices, and where all requests for services under this CA should be made, are:

1. For the FAA:

Office of International Aviation (AIA-200)
 Federal Aviation Administration
 800 Independence Ave., S.W.
 Washington, D.C. 20591
 telephone no. _____
 fax no. _____

2. For ASFEA:

[Address]

C. The designated offices for the coordination and management of any Letter of Credit and of any communication with the Issuing or the Confirming Institution regarding the submission of documents and receipt of funds under Letters of Credit established under this CA, are:

1. For the FAA:

Assistant Administrator for Policy, Planning and International Aviation
 Budget & Financial Management Staff (API- 18)
 Federal Aviation Administration
 800 Independence Ave., S.W.
 Washington, D.C. 20591
 telephone no. _____
 fax no. _____

2. For ASFEA:
[Address]

ARTICLE IV—FUNDING

A. Unless otherwise specified in any revision of this CA, there shall be no modification to any term of any active Letter of Credit established pursuant to the terms of this CA unless all parties to the Letter of Credit so agree.

B. CA number 085 has been assigned by the FAA to identify this Cooperative Agreement and shall be referenced in all correspondence related to this CA.

ARTICLE V—REMAINDERS

In an instance where there are funds remaining on account with the Confirming Institution or with the Issuing Institution upon completion of the training contemplated in the Memorandum of Agreement with the FAA for the training of personnel of the Civil Aviation Directorate of the Republic of Shangri La and funded through this CA:

1. ASFEA, as the Applicant, with the agreement of the FAA, as the Beneficiary, may withdraw any remaining funds from the Letter of Credit, in a manner agreed upon by ASFEA and the Issuing Institution; or
2. ASFEA, as the Applicant, with the agreement of the FAA, and with further training added in an Appendix to the original Memorandum of Agreement with the FAA for the training of personnel of the Civil Aviation Directorate of the Republic of Shangri La, may add funds to the existing Letter of Credit, in a manner agreed upon by ASFEA, the Issuing Institution, and the Confirming Institution sufficient to fund any such further training.

ARTICLE VI—ASSIGNMENT

This CA shall not be assigned by either party without the prior written consent of the other party.

ARTICLE VII—ENTIRE AGREEMENT

This CA subsequently executed by the parties constitutes the entire agreement between the parties concerning the subject matter of this CA.

ARTICLE VIII—HEADINGS

The titles and headings of the articles of this CA are for the convenience of reference only and do not form a part of this CA and shall in no way affect the interpretation thereof.

ARTICLE IX—WAIVERS

None of the provisions of this CA shall be considered waived by a party unless such waiver is given in writing to the other party. The failure of a party to insist upon strict performance of any of the terms and conditions of this CA, or the failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any right by the party.

ARTICLE X—SEVERABILITY

The illegality or invalidity of any provision of this CA shall not impair, affect, or invalidate other provisions of this CA.

ARTICLE XI—CONSTRUCTION

Each party hereby acknowledges that all parties hereto participated equally in the negotiation and drafting of this CA and that, accordingly, no person or court construing this CA shall construe it more stringently against one party than against the other.

ARTICLE XII—INDEPENDENT CONTRACTORS

The parties to this CA are independent contractors and are not agents of each other, joint venturers, partners, or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty, or representation as to any matter and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.

ARTICLE XIII—RIGHTS

Except as required by applicable law, neither party shall release any information or material related to this CA or pertinent to the tasks under any underlying agreement to third parties other than, where necessary, the Issuing and/or Confirming Institutions, or to contractors or subcontractors engaged in the training activities referred to in Article II.

ARTICLE XIV—AMENDMENTS

This CA or its Annexes or Appendices may be amended by mutual consent of the Parties. The details of any such amendment shall be memorialized by written agreement signed by both parties. Should an amendment have any effect upon an existing Letter of Credit entered into pursuant to this CA, the adoption of the amendment shall be subject to the agreement of the financial institutions participating in the affected Letter of Credit, pursuant to Article IV A.

ARTICLE XV—RESOLUTION OF DISAGREEMENTS

Any disagreement regarding the interpretation or application of this CA or its Annexes and Appendices shall be resolved by consultations between the Parties and shall not be referred to any international tribunal or third party for settlement.

ARTICLE XVI—ENTRY INTO FORCE AND TERMINATION

A. This CA shall enter into force on the date of the last signature and shall remain in force until terminated.

B. This CA or its Annexes or Appendices may be terminated at any time by either party by providing sixty (60) days notice in writing to the other party. Termination of this CA shall not affect existing obligations of the parties under any Article herein. Each party shall have one hundred and twenty (120) days to close out its activities following termination of this CA or its Annexes or Appendices. Termination of this CA also shall terminate all Annexes and Appendices subsequently concluded by the parties pursuant to this CA.

C. Upon termination, each active Letter of Credit shall remain in force until all activity funded by the Letter of Credit has been completed and the funds have been properly transferred to the FAA. Any funds remaining in any Letter of Credit shall be distributed as set forth in Article V(1).

ARTICLE XVII—SIGNATURE IN COUNTERPARTS

To facilitate execution, this CA or its Annexes or Appendices may be executed in as many counterparts as may be required. It shall not be necessary that the signature of or on behalf of each party appear on each counterpart, but it shall be sufficient that the signature of or on behalf of each party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement.

ARTICLE XVIII—AUTHORITY

The FAA and ASFEA agree to the provisions of this CA as indicated by the signature of their duly authorized representatives.

FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

AVIATION SAFETY
FOUNDATION OF
EAST ASIA

BY: _____
[]
TITLE: Director,
International Aviation

BY: _____
TITLE: Director of Finance

Handwritten initials: "all"