

§ 239.3

22 CFR Ch. II (4–1–24 Edition)

Date of Application means the date on which an Application for Compensation is actually received by USAID pursuant to § 239.15.

Defaulted Payment means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

Eligible Note(s) means [a] Note[s] meeting the eligibility criteria set out in § 239.4.

Fiscal Agency Agreement means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency services in respect of the Note[s], a copy of which Fiscal Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

Fiscal Agent means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

Further Guaranteed Payments means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

Guarantee means the guarantee of USAID issued pursuant to this part and Section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113).

Guarantee Payment Date means a Business Day not more than three (3) Business Days after the related Date of Application.

Interest Amount means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

Interest Rate means the interest rate borne by an Eligible Note.

Loss of Investment means, in respect of any Eligible Note, an amount in United States Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

Note[s] means any debt securities issued by the Borrower.

Noteholder means the owner of an Eligible Note who is registered as such on the Note Register.

Note Register means the register of Eligible Notes required to be maintained by the Fiscal Agent.

Person means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Principal amount means the principal amount of the Eligible Notes issued by the Borrower. For purposes of determining the principal amount of the Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be the stated principal amount thereof.

USAID means the United States Agency for International Development or its successor.

§ 239.3 The Guarantee.

Subject to the terms and conditions set out in this part, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100 percent of principal and interest due on Eligible Notes. Under the Guarantee, USAID agrees to pay to any Noteholder compensation in United States Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such

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Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. The Guarantee shall apply to each Eligible Note registered on the Note Register required to be maintained by the Fiscal Agent.

§ 239.4 Guarantee eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by a Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID or

(ii) The delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer, Assistant Administrator and Deputy, Bureau for Economic Growth, Education, and Environment, Director and Deputy Director, Office of Development Credit, and such other individual(s) designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 239.5 Non-impairment of the Guarantee.

After issuance of the Guarantee, the Guarantee will be an unconditional, full faith and credit obligation of the United States of America and will not be affected or impaired by any subsequent condition or event. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder. In particular and without limitation, the Guarantee shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes.

§ 239.6 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person, provided that such transfer is permitted under applicable law and regulation, including, without limitation, the Office of Foreign Asset Control (OFAC) regulations. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register required to be maintained by the Fiscal Agent pursuant to the Fiscal Agency Agreement. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of the Guarantee, and USAID shall not be affected by notice to the contrary.

§ 239.7 Fiscal Agent obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under the Guarantee, but may be the subject of action for damages against the Fiscal Agent by USAID as a result of such failure or neglect. A Noteholder may