AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 213

RIN 0412–AA96

Claims—Collection Regulation

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is revising its regulation on claims collection in its entirety to incorporate applicable statutory and regulatory provisions and to make other changes. Specifically, an amendment made by the Digital Accountability and Transparency Act of 2014 (DATA Act) requires USAID to refer to the Secretary of the Treasury all past-due, legally enforceable, non-tax debt that are over 120 days delinquent. The changes will maximize the effectiveness of USAID's claim-collection procedures.

DATES: Effective July 12, 2021.

FOR FURTHER INFORMATION CONTACT: Dorothea Malloy, Senior Advisor to the Chief Financial Officer, 202–916–2518, *dmalloy@usaid.gov* for clarification of content or information pertaining to status or publication schedules. All communications regarding this rule must cite RIN No. 0412–AA96

SUPPLEMENTARY INFORMATION: USAID sought public comment on a proposed rule published on March 1, 2021, to revise its regulations under 22 CFR part 213, USAID's claim-collection regulation. The final rule's purpose is to conform to a statutory requirement that Federal Departments and Agencies must refer all past-due, legally enforceable, non-tax debt that is delinquent for more than 120 days, including non-tax debt administered by a third party that is acting as an agent for the Federal Government, to the Secretary of the Treasury for the purposes of administrative offset. The final rule also updates claims-collection definitions to align with the Debt Collection Improvement Act of 1996 and specifies that the Bureau of the Fiscal Service is the Agency within the U.S. Department of the Treasury to which USAID refers delinquent debts.

A. Background

USAID published a proposed rule in the **Federal Register** at 86 FR 11905 (March 1, 2021) to revise its regulation on claims collection in its entirety to incorporate applicable statutory and regulatory provisions and to make other changes. The public comment period for this proposed rule ended on March 31, 2021.

B. Discussion and Analysis

There were no relevant public comments submitted in response to the proposed rule and no changes were made to the final rule.

C. Regulatory Findings

Executive Orders 12866, 13563, and 13771

USAID has drafted this rule in accordance with Executive Orders (E.O.s) 12866 and 13563, which direct Federal Departments and Agencies to assess all the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equality). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. USAID has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in E.O.s 12866 and 13563 and finds that the benefits of issuing this rule outweigh any costs, which the Agency assesses to be minimal. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB/OIRA) has determined that this rule is not a ''significant regulatory action'' as defined in E.O. 12866 and, accordingly, has not reviewed it. OMB/OIRA also has determined that this rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O. 12866. This final rule is not subject to the requirements of E.O. 13771 because OMB has determined it to be non-significant within the meaning of E.O. 12866.

Regulatory Flexibility Act

USAID certifies that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, the Agency has not prepared a regulatory-flexibility analysis.

Small Business Regulatory Enforcement Fairness Act

This rule is not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (Section 804(2) of Title 5 of the United States Code [U.S.C.]). This rule will not result in an annual effect on the U.S. economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and import markets.

Unfunded Mandates Reform Act

This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, USAID has deemed no actions were necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with E.O. 13132, USAID has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Summary Impact Statement.

Executive Order 12988

In accordance with E.O. 12988, the Office of the General Counsel at USAID has determined that this rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive order.

Executive Order 13175

USAID has determined that this rule would not have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes (E.O. 13175).

Paperwork Reduction Act

This rule does not contain information-collection requirements, and therefore a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required.

List of Subjects in 22 CFR Part 213

Claims, Government employees, Income taxes, Wages.

Accordingly, the Agency for International Development amends 22 CFR part 213 as follows:

PART 213—CLAIMS COLLECTION

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 22 U.S.C. 2381(a); 31 U.S.C. 902(a); 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR parts 900 through 904.

Subpart A—General Provisions

■ 2. Revise the heading for subpart A to read as set for above.

■ 3. Revise § 213.1 to read as follows:

§ 213.1 Purpose and scope.

(a) *Purpose.* This part prescribes standards and procedures for the collection and disposal of claims due to the United States from the U.S. Agency for International Development (USAID). This part covers USAID's administrative actions to collect claims/debts (including administrative and salary offsets; compromise; suspension or termination of collection actions; transfer and/or referral of claims to the U.S. Departments of the Treasury and Justice). The terms ''claim'' and ''debt'' are synonymous and interchangeable. They refer to an amount of money, funds, or property that an appropriate USAID official has determined to be due to the United States from any person, organization, or entity except another Federal Department or Agency.

(b) *Scope.* The standards and procedures in this part are applicable to all claims and debts for which a statute, regulation, or contract does not prescribe different standards or procedures.

(c) *Applicability.* This part does not apply to USAID:

(1) Claims arising out of loans for which compromise and collection authority is conferred by section 635(g)(2) of the Foreign Assistance Act of 1961, as amended;

(2) Claims arising from investment guaranty operations for which settlement and arbitration authority is conferred by section 635(l) of the Foreign Assistance Act of 1961, as amended;

(3) Claims against any foreign country or any political subdivision thereof, or any public international organization;

(4) Claims where the Chief Financial Officer (CFO) determines that the achievement of the purposes of the Foreign Assistance Act of 1961, as amended, or any other provision of law administered by USAID require a different course of action;

(5) Claims owed USAID by other Federal Departments and Agencies. Such debts will be resolved by negotiation between the Departments/Agencies; and

(6) Claims that appear to be fraudulent, false, or misrepresented by a party with an interest in the claim except to the extent provided in § 213.4.

■ 4. Amend § 213.2 by revising paragraphs (d) through (o) and adding paragraphs (p) through (s) to read as follows:

§ 213.2 Definitions.

* * * * *

(d) *Claim (or Debt)* means an amount of money, funds, or property that a USAID official has determined to be due the United States from any person, organization, or entity, except another Federal Department or Agency. As used in this part, the terms ''debt'' and ''claim'' are synonymous and interchangeable.

(e) *CFO* means the Chief Financial Officer of USAID or a USAID official delegated by the CFO to act on the CFO's behalf.

(f) *Compromise* means that the creditor Agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(g) *Creditor Agency* means the Federal Department or Agency to which the debt is owed, including a debt-collection center when acting on behalf of a creditor Agency in matters pertaining to the collection of a debt.

(h) *Debtor* means an individual, organization, association, corporation, or a State or local government indebted to the United States, or a person or entity with legal responsibility for assuming the debtor's obligation.

(i) *Delinquent debt* means any debt that is past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the Agency's initial written demand for payment notice or applicable agreement or instrument (including a postdelinquency payment agreement) unless the parties involved have made other satisfactory payment arrangements.

(j) *Discharge of indebtedness* means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(k) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay, which remains after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders) in accordance with 5 CFR parts 581 and 582. Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26 of the United States Code) and deductions described in 5 CFR 581.105(b) through (f). These deductions include, but are not limited to, Social Security withholdings; Federal, State, and local tax withholdings; health-insurance premiums; retirement contributions; and life-insurance premiums.

(l) *Employee* means a current U.S. Direct-Hire employee of the Federal Government, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(m) *Employee* salary offset means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(n) *Person* means an individual, firm, partnership, corporation, association, and, except for purposes of administrative offsets under subpart C of this part and interest, penalties, and administrative costs under subpart B of this part, includes State and local governments and Indian tribes and components of tribal governments.

(o) *Recoupment* is a special method for adjusting debts that arise under the same transaction or occurrence. For example, obligations that arise under the same contract generally are subject to recoupment.

(p) *Suspension* means the temporary cessation of active debt collection pending the occurrence of an anticipated event.

(q) *Termination* means the cessation of all active debt-collection action for the foreseeable future.

(r) *Waiver* means the decision to forgo the collection of a debt owed to the United States, as provided for by a specific statute and according to the standards set out under that statute.

(s) *Withholding order* means any order for the withholding or garnishment of pay issued by USAID or a judicial or administrative body. For the purposes of this part, ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 213.3 [Removed]

■ 5. Remove § 213.3.

§ 213.4 [Redesignated as § 213.3]

■ 6. Redesignate § 213.4 as § 213.3.

■ 7. Amend newly redesignated § 213.3 by revising paragraph (a) to read as follows:

§ 213.3 Other remedies.

(a) This part does not supersede or require the omission or duplication of administrative proceedings required by contract, statute, or regulation (*e.g.,* resolution of audit findings under grants or contracts; or appeal provisions under grants or contracts).

* * * * *

§ 213.5 [Redesignated as § 213.4]

■ 8. Redesignate § 213.5 as § 213.4 and revise it to read as follows:

§ 213.4 Fraud claims.

(a) The CFO will refer a claim that appears to be fraudulent, false, or misrepresented by a party that has an interest in the claim to the USAID Office of Inspector General (OIG). The OIG has the responsibility for investigating or referring the matter, where appropriate, to the U.S. Department of Justice (DOJ). The OIG has the responsibility to provide the results of the investigation on a timely basis to the CFO for any further action.

(b) The CFO will not administratively compromise, terminate, or suspend collection action, or otherwise dispose of a claim that appears to be fraudulent, false, or misrepresented by a party that has an interest in the claim, without the approval of DOJ.

§ 213.6 [Redesignated as § 213.5]

■ 9. Redesignate § 213.6 as § 213.5 and revise it to read as follows:

§ 213.5 Subdivision of claims not authorized.

USAID will not subdivide a claim to avoid the $100,000 limit on the Agency's authority to compromise a claim, suspend collection action on a claim, or terminate collection action on a claim. A debtor's liability that arises from a particular transaction or contract is a single claim.

§ 213.7 [Redesignated as § 213.6]

■ 10. Redesignate § 213.7 as § 213.6.

Subpart B—Collection Actions

■ 11. Revise the heading for subpart B to read as set forth above.

§ 213.8 [Redesignated as § 213.7 and Transferred to Subpart B]

■ 12. Redesignate § 213.8 as § 213.7 and transfer it to subpart B.

■ 13. Amend newly redesignated § 213.7 by revising paragraph (a) to read as follows:

§ 213.7 Collection—general.

(a) The CFO takes action to collect all debts owed the United States that arise out of USAID's activities, and to reduce debt delinquencies. Collection actions may include sending at least one written demand for payment notice to the debtor's last-known address provided in the records of USAID. Other appropriate action may proceed the written demand for payment notice, including immediate referral to DOJ for litigation, when such action is necessary to protect the Federal Government's interest.

* * * * *

§ 213.9 [Redesignated as § 213.8]

■ 14. Redesignate § 213.9 as § 213.8.

■ 15. Amend newly redesignated § 213.8 by:

■ a. Revising the section heading and paragraphs (a) introductory text and (a)(4), (5), (7), (8), (10), and (11);

■ b. Adding paragraph (a)(12); and

■ c. Revising paragraph (b).

The revisions and addition read as follows:

§ 213.8 Written demand for payment notice.

(a) When an Agency official determines that a debt is owed to USAID, the Agency sends a written demand for payment notice to the debtor. Unless otherwise provided by agreement, contract, or order, the written demand for payment notice informs the debtor of:

* * * * *

(4) Any rights available to the debtor to review the debt, or to have recovery of the debt waived (by citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(5) The date on which debt payment is due, which will be not more than 30 days from the date the written demand for-payment notice is mailed or hand delivered;

* * * * *

(7) The debt is considered delinquent if it is not paid on the due date provided in the initial written demand-of payment notice;

(8) The imposition of interest charges, penalties, and administrative costs that USAID may assess against a delinquent debt, and the date when such charges apply;

* * * * *

(10) The Agency will refer delinquent debt unpaid at 90 days from the initial written demand for payment notice to the Bureau of the Fiscal Service (Fiscal Service) within the U.S. Department of the Treasury. Statute requires the referral of delinquent debt to Fiscal Service no later than 120 days from the initial written demand-for-payment notice. Fiscal Service will use means available to the Federal Government for collecting a debt, including administrative wage-garnishment, the use of collection agencies, and reporting the indebtedness to a credit-reporting bureau (see § 213.15);

(11) The address, telephone number, and name of the person available to discuss the debt; and

(12) The possibility of referral to DOJ for litigation if USAID cannot collect the debt administratively.

(b) USAID will respond promptly to written communications from the debtor, generally within 30 days of receipt of such a communication.

§ 213.10 [Redesignated as § 213.9]

■ 16. Redesignate § 213.10 as § 213.9.

■ 17. Amend newly redesignated § 213.9 by revising the section heading and paragraphs (a) and (c) and adding paragraph (e) to read as follows:

§ 213.9 Agency review requirements.

(a) For purposes of this section, whenever USAID must afford a debtor a review within the Agency, USAID shall provide the debtor with a reasonable opportunity for a review when the debtor requests reconsideration of the debt in question. The review may include the examination of documents, internal discussions with relevant officials, and discussion by letter or orally with the debtor, at USAID's discretion. For the offset of current Federal salary under 5 U.S.C. 5514 for certain debts, an employee may request an outside hearing. See §§ 213.21 and 213.22 when USAID is the creditor Agency.

* * * * *

(c) This section does not require an oral hearing with respect to debt collection in which the agency has determined that review of the written record is an adequate means to correct a prior mistake.

* * * * *

(e) If, after review, USAID either sustains or amends its determination, it shall notify the debtor of its intent to collect the sustained or amended debt. The notification to collect the sustained or amended debt will include accrued interest on the sustained or amended debt, calculated from the date of delinquency. If USAID has suspended collection actions previously, it will reinstitute them unless it receives payment of the sustained or amended amount, or the debtor has made a proposal for a payment plan to which the Agency agrees, by the date specified in the notification of USAID's decision.

§ 213.11 [Redesignated as § 213.10]

■ 18. Redesignate § 213.11 as § 213.10.

■ 19. Amend newly redesignated § 213.10 by revising paragraph (b) to read as follows:

§ 213.10 Aggressive collection actions; documentation.

* * * * *

(b) USAID documents all administrative collection actions in the claim file, along with the basis for any compromise, termination, or suspension of collection actions. USAID retains this documentation, which may include the Claims-Collection Litigation Report (CCLR) provided in § 213.24, in the appropriate debt file.

§ 213.12 [Redesignated as § 213.11]

■ 20. Redesignate § 213.12 as § 213.11.

■ 21. Amend newly redesignated § 213.11 by revising the section heading and paragraphs (a)(1) and (e) to read as follows:

§ 213.11 Interest, penalties, and administrative costs.

(a) * * *

(1) Interest begins to accrue on all delinquent debts starting from the day after the payment due date established in the initial written demand-for payment notice to the debtor. USAID will assess an annual rate of interest that is equal to the U.S. Department of the Treasury Current Value of Funds Rate (CVFR) unless a different rate is necessary to protect the interest of the Federal Government. USAID will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

* * * * *

(e) *Waivers for the collection of interest, penalties, and administrative costs.* (1) The CFO will waive the collection of interest and administrative charges on the portion of the debt paid within 30 days after the date on which interest begins to accrue. The CFO may extend this 30-day period, on a case-by case basis, when he or she determines that such action is in the best interest of the Federal Government. A decision to extend or not to extend the payment period is final, and is not subject to further review.

(2) The CFO may (without regard to the amount of the debt) waive the collection of all or part of accrued interest, penalties, or administrative costs, when he or she determines that—

(i) A waiver is justified under the standards for the compromise of claims under § 213.25; or

(ii) Collection of these charges would be against equity and good conscience, or is not in the best interest of the United States.

(3) The CFO may make a decision to waive interest, penalties, or administrative costs at any time.

§ 213.13 [Redesignated as § 213.12]

■ 22. Redesignate § 213.13 as § 213.12 and revise it to read as follows:

§ 213.12 Interest, penalties, and administrative costs pending consideration of debt waiver or review.

Interest, penalties, and administrative costs will continue to accrue on a debt during a review by USAID and during a waiver of indebtedness consideration by the Agency; except that USAID will not assess interest, penalties, and administrative costs where a statute or a regulation specifically prohibits the collection of the debt during the period of the Agency's review or consideration of a debt waiver.

■ 23. Add new § 213.13 to read as follows:

§ 213.13 Waivers of indebtedness.

The CFO may grant waivers of indebtedness for certain types of debt identified in Federal statutes under the following waiver authorities:

(a) *Waiver authorities*—(1) *Debts that arise out of erroneous payments of pay and allowances, and of travel, transportation, and relocation expenses and allowances.* Title 5 U.S.C. 5584 provides the authority for waiving, in whole or in part, debts that arise out of erroneous payments of pay or allowances, travel, transportation, or relocation expenses and allowances to an employee of USAID, if collection would be against equity and good conscience, or not in the best interests of the United States:

(i) The CFO may not grant a waiver if there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person who has an interest in obtaining a waiver.

(ii) Fault is considered to exist if, in light of the circumstances, the employee knew, or should have known through the exercise of due diligence, that an error existed, but he or she failed to take corrective action. What an employee should have known is evaluated under a reasonable-person standard. However, employees are expected to have a general understanding of the Federal pay system applicable to them.

(iii) An employee with notice that a payment might be erroneous is expected to make provisions for eventual repayment. Financial hardship is not a basis for granting a waiver for an employee who was on notice of an erroneous payment.

(iv) If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person who has an interest in obtaining a waiver of the claim, the employee is not automatically entitled to a waiver. Before granting a waiver, the deciding official also must determine that collection of the claim against an employee would be against equity and good conscience, or not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience, or not in the best interests of the United States, include, but are not limited to, the following:

(A) Whether collection of the claim would cause serious financial hardship to the employee from whom the Agency seeks collection;

(B) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of his or her financial circumstances;

(C) The time elapsed between the erroneous payment and the discovery of the error and notification of the employee;

(D) Whether failure to make restitution would result in unfair gain to the employee; and

(E) Whether recovery of the claim would be unconscionable under the circumstances.

(2) *Debts that arise out of advances in pay (5 U.S.C. 5524a); situations of Authorized or Ordered Departures (5 U.S.C. 5522); or allowances and differentials for employees stationed abroad (5 U.S.C. 5922).* Title 5 U.S.C. 5524a, 5522, or 5922 provide authority for waiving, in whole or in part, a debt that arises out of such an advance payment if it is shown that recovery would be against equity and good conscience, or against the public interest:

(i) Factors to consider when determining if recovery of an advance payment would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(3) *Debts that arise out of employee training expenses.* Title 5 U.S.C. 4108 provides the authority for waiving, in whole or in part, a debt that arises out of employee training expenses if it is shown that recovery would be against

equity and good conscience, or against the public interest:

(i) Factors to consider when determining if recovery of a debt that arises out of employee training expenses would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(4) *Under-withholding of life insurance premiums.* Title 5 U.S.C. 8707(d) provides the authority for waiving the collection of unpaid deductions that result from the underwithholding of premiums under the Federal Employees' Group Life Insurance Program if the individual is without fault and recovery would be against equity and good conscience, or against the public interest:

(i) Fault is considered to exist if, in light of the circumstances, the employee knew, or should have known through the exercise of due diligence, that an error existed, but he or she failed to take corrective action:

(ii) Factors to consider when determining whether the recovery of unpaid deduction that results from under-withholding would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Whether collection of the claim would cause serious financial hardship to the individual from whom the Agency seeks collection;

(B) The time elapsed between the failure to withhold properly and the discovery of the failure and notification of the individual;

(C) Whether failure to make restitution would result in unfair gain to the individual; and

(D) Whether recovery of the claim would be unconscionable under the circumstances.

(5) *Student-Loan Repayment Program service agreements.* Title 5 U.S.C. 5379 provides for waiving, in whole or in part, debt that arises from the Student Loan Repayment Program if it is shown that recovery would be against equity and good conscience, or against the public interest:

(i) Factors to consider when determining if recovery of a debt that arises out of the Student-Loan Repayment Program would be against equity and good conscience, or against the public interest, include, but are not limited to, the following:

(A) Death of the employee;

(B) Retirement of the employee for disability;

(C) Inability of the employee to return to duty because of disability (supported by an acceptable medical certificate); and

(D) Whether failure to repay would result in unfair gain to the employee.

(ii) [Reserved]

(b) [Reserved]

■ 24. Amend § 213.14 by revising the introductory text to read as follows:

§ 213.14 Contracting for collection services.

USAID has entered into a cross-servicing agreement with the Bureau of the Fiscal Service (Fiscal Service) of the U.S. Department of the Treasury. Fiscal Service is authorized to take all appropriate action to enforce the collection of accounts referred to it in accordance with applicable statutory and regulatory requirements. Fiscal Service bases any applicable fees on the funds collected, and will collect such fees from the debtor along with the original amount of the indebtedness. After referral, Fiscal Service will be solely responsible for the maintenance of the delinquent debtor records in its possession, and for updating the accounts as necessary. Fiscal Service may take any of the following collection actions on USAID's behalf:

* * * * *

■ 25. Amend § 213.15 by revising the section heading, introductory text, and paragraphs (b) introductory text, (b)(2)(ii) and (iii), and (c) and removing paragraph (d).

The revisions read as follows:

§ 213.15 Use of credit-reporting bureaus.

USAID reports delinquent debts owed to it to appropriate credit-reporting bureaus through the cross-servicing agreement with the Bureau of the Fiscal Service (Fiscal Service) at the U.S. Department of the Treasury.

* * * * *

(b) Before referring claims to Fiscal Service and disclosing debt information to credit-reporting bureaus, USAID will have done the following:

* * * * *

(2) * * *

(ii) If the debtor does not pay the debt 90 days after receiving the initial written demand-for-payment notice, USAID intends to refer the debt to Fiscal Service and disclose to a credit-reporting agency the information authorized for disclosure by this subpart; and

(iii) The debtor can request an Agency review or waiver, where applicable.

(c) Before submitting information to a credit-reporting bureau, USAID will provide a written statement to Fiscal Service that the Agency has taken all required actions. Additionally, Fiscal Service thereafter will update the accounts as necessary during the period it holds the account information.

§ 213.17 [Amended]

■ 26. Amend § 213.17 in the first sentence by adding the words ''or she'' after the word ''he''.

§ 213.19 [Amended]

■ 27. Amend § 213.19 in the first sentence of paragraph (a) by removing the word ''penalty'' and adding ''penalties,'' in its place.

Subpart C—Administrative and Salary Offset

■ 28. Revise the heading for subpart C to read as set forth above.

■ 29. Amend § 213.20 by:

■ a. Revising paragraphs (a)(1), (a)(2)(ii), (a)(3)(i), and (b);

■ b. Removing paragraph (c);

■ c. Redesignating paragraphs (d) through (h) as paragraphs (c) through (g);

■ d. Revising the subject heading to newly redesignated paragraph (d) and revising paragraph (d)(1); and

■ e. In newly redesignated paragraphs (f)(1) and (f)(2)(ii), removing ''creditor agency'' and adding ''creditor Agency'' in its place.

The revisions read as follows:

§ 213.20 Administrative offset of nonemployee debts.

* * * * *

(a) * * *

(1) The CFO collects debts by administrative offset only after USAID has sent the debtor a written demand-for-payment notice that outlines the type and amount of the debt, the intention of the Agency to use administrative offset to collect the debt, and explaining the debtor's rights under 31 U.S.C. 3716.

(2) * * *

(ii) The opportunity for a review within USAID of the Agency's decision related to the claim(s); and

* * * * *

(3) * * *

(i) The offset is in the nature of a recoupment;

* * * * *

(b) *Interagency offset.* The CFO may offset a debt owed to another Federal Department or Agency from amounts due or payable by USAID to the debtor, or may request another Federal Department or Agency to offset a debt owed to USAID. The CFO, through USAID's cross-servicing arrangement with the Bureau of the Fiscal Service (Fiscal Service) within the U.S. Department of the Treasury, may request the Internal Revenue Service to offset an overdue debt from a Federal income-tax refund due to the debtor. Fiscal Service may also garnish the salary of a private-sector employee when reasonable attempts to obtain payment have failed. USAID will make interagency offsets from an employee's salary in accordance with the procedures contained in §§ 213.22 and 213.23.

* * * * *

(d) *Review of a decision to offset the debt.* (1) USAID will not offset the debt while a debtor is seeking review of the debt under this section, or under another statute, regulation, or contract. However, interest, penalties, and administrative costs will continue to accrue during this period, unless otherwise waived by the CFO. The CFO may initiate offset as soon as practical after the completion of a review, or after a debtor waives the opportunity to request review.

* * * * *

■ 30. Amend § 213.21 by revising paragraph (b) to read as follows:

§ 213.21 Employee salary offset—general.

* * * * *

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed USAID and debts owed to other Federal Departments and Agencies by USAID's employees. USAID will make every effort reasonably and lawfully possible to collect administratively any amounts owed by its employees prior to initiating collection by salary offset. An amount advanced to an employee for per diem or mileage allowances in accordance with 5 U.S.C. 5705, but not used for allowable travel expenses, is recoverable from the employee by salary offset without regard to the due-process provisions in § 213.22. This section does not apply to debts for which another statute collection explicitly provides for, or prohibits, salary offset (*e.g.,* travel advances under 5 U.S.C. 5705 and employee-training expenses under 5 U.S.C. 4108).

* * * * *

■ 31. Amend § 213.22 by revising the section heading and paragraphs (c)(4) and (9), and (d), the paragraph (f) subject heading, and paragraphs (f)(1), (g), (k)(1), (n) introductory text, and (n)(1) and (3) to read as follows:

§ 213.22 Salary offset when USAID is the creditor Agency.

* * * * *

(c) * * *

(4) An explanation of the requirements concerning interest, penalties, and administrative costs;

* * * * *

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalties, and administrative costs, and the commencement of collection proceedings;

* * * * *

(d) *Request for a hearing.* An employee may request a hearing by filing a written, signed request to the Office of the Chief Financial Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, USAID Annex, Room 8.80D, Washington, DC 20523–4601. The request must state the basis upon which the employee disputes the proposed collection of the debt. The employee must sign the request, and USAID must receive it within 15 days of his or her receipt of the notification of proposed deductions. The employee should submit, in writing, all facts, evidence, and witnesses that support his or her position to the CFO within 15 days of the date of the request for a hearing. The CFO will arrange for the services of a hearing official not under the control of USAID, and will provide the hearing official with all documents relating to the claim.

* * * * *

(f) *Form of hearing, written response, and final decision.* (1) Normally, a hearing will consist of the hearing official's making a decision based on a review of the claims file and any materials submitted by the debtor. However, in instances in which the hearing official determines that the validity of the debt turns on an issue of veracity or credibility that the review of documentary evidence cannot resolve, the hearing official, at his or her discretion, may afford the debtor an opportunity for an oral hearing. Such an oral hearing will consist of a conference before a hearing official in which the employee and the Agency will have the opportunity to present evidence, witnesses, and argument. If desired, the employee may be represented by an individual of his or her choice. The Agency shall maintain a summary record of oral hearings provided under the procedures in this section.

* * * * *

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances (*e.g.,* 5 U.S.C. 5584 or 5 U.S.C. 5724(i)). When an employee requests waiver consideration under a right authorized by statute, the Agency will suspend further collection on the debt until it makes a final administrative decision on the waiver request. However, when it appears that an employee's resignation, termination, or other action may prejudice the Government's ability to recover the debt, the suspension of recovery is not required. During the period of the suspension, USAID will not assess interest, penalties, charges, and administrative costs against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver. See § 213.13.

* * * * *

(k) * * *

(1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's written demand-for-payment notice of intention to collect, from the employee's current pay unless he or she has paid the debt or filed a timely request for a hearing on issues for which a hearing is appropriate.

* * * * *

(n) *Interest, penalties, and administrative cost.* USAID will assess interest, penalties, and administrative costs on debts collected under the procedures in this section. Interest, penalties, and administrative costs will continue to accrue during the period that the debtor is seeking a review of the debt or requesting a waiver. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) USAID will start to assess interest on all debts not collected by the payment due date specified in the initial written demand-for-payment notice. USAID will waive the collection of interest and administrative charges on the portion of the debt paid within 30 days after the date on which interest begins to accrue.

* * * * *

(3) Deductions by administrative offset normally begin prior to the time for assessment of a penalty. Therefore, USAID will not assess a penalty charge unless deductions occur more than 90 days from the due date in the initial written demand-for-payment notice.

* * * * *

■ 32. Amend § 213.23 by:

■ a. Revising the section heading;

■ b. Removing ''creditor agency'' and ''creditor agency's'' and adding in their places ''creditor Agency'' and ''creditor

Agency's'', respectively, wherever they appear; and

■ c. Revising paragraph (b).

The revisions read as follows:

§ 213.23 Salary offset when USAID is not the creditor Agency.

* * * * *

(b) *Requests to USAID by another Agency to offset salary.* Requests for salary offset must be sent to the Office of the Chief Financial Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, USAID Annex, Room 8.80D, Washington, DC 20523–4601.

* * * * *

Subpart D—Compromise of Claims

■ 33. Revise the heading for subpart D to read as set forth above.

■ 34. Revise § 213.24 to read as follows:

§ 213.24 General.

The CFO may compromise claims for money or property when the principal balance of a claim, exclusive of interest, penalties, and administrative costs, does not exceed $100,000. Where the claim exceeds $100,000, the authority to accept the compromise rests with DOJ. The CFO may reject an offer of compromise in any amount. DOJ's approval is not required if the Agency rejects a compromise offer. When the claim exceeds $100,000 and the CFO recommends acceptance of a compromise offer, he or she will refer the claim with his or her recommendation to DOJ for approval. The referral may be in the form of the Claims-Collection Litigation Report (CCLR) and will outline the basis for USAID's recommendation. USAID refers compromise offers for claims in excess of $100,000 to the Commercial Litigation Branch of the Civil Division of the Department of Justice, Washington, DC 20530, unless otherwise provided by DOJ's delegations or procedures.

■ 35. Revise § 213.25 to read as follows:

§ 213.25 Standards for the compromise of claims.

(a) The CFO may compromise a claim pursuant to this section if USAID cannot collect the full amount because:

(1) The debtor is unable to pay the full amount of the debt within reasonable time, as verified through credit reports or other financial information;

(2) The Federal Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court;

(b) In evaluating the debtor's inability to pay, the CFO may consider, among other factors, the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; or

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Federal Government's ability to enforce collection;

(c) The CFO may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is significant doubt concerning the Federal Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or because of a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, USAID will give proportionate weight to the likely amount of court costs and attorney fees the Government could incur if it is unsuccessful in litigation;

(d) The CFO may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection might be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, USAID may consider the positive effect that enforced collection of the claim could have on the collection of other similar claims;

(e) To assess the merits of a compromise offer, the CFO should obtain a current financial statement from the debtor, executed under penalty of perjury, that shows the debtor's assets, liabilities, income and expense; and

(f) The CFO may compromise statutory penalties, forfeitures, or debts established as an aid to enforcement, and to compel compliance, when he or she determines that accepting the offer will serve the Agency's enforcement policy adequately, in terms of deterrence and securing compliance (both present and future).

Subpart E—Suspension or Termination of Collection Action

§ 213.29 [Amended]

■ 36. Amend § 213.29 by removing ''penalty charges'' and adding ''penalties,'' in its place.

■ 37. Amend § 213.30 by:

■ a. Revising the section heading;

■ b. Adding the words ''or her'' after ''his'' in paragraph (c); and

■ c. Revising paragraphs (d) introductory text and (e).

The revisions read as follows:

§ 213.30 Standards for suspension of collection action.

* * * * *

(d) The CFO may suspend collection activities on debts of $100,000 or less during the pendency of a permissive waiver or administrative review when there is no statutory requirement and he or she determines that:

* * * * *

(e) The CFO will decline to suspend collection when he or she determines that the request for waiver or administrative review is frivolous, or that the debtor made it primarily to delay collection.

§ 213.31 [Amended]

■ 38. Amend § 213.31 in the first sentence by removing the word ''penalty'' and adding ''penalties,'' in its place.

■ 39. Amend § 213.32 by revising the section heading and the introductory text to read as follows:

§ 213.32 Standards for termination of collection action.

The CFO may terminate collection action on a debt when he or she determines that:

* * * * *

■ 40. Revise § 213.34 to read as follows:

§ 213.34 Debts discharged in bankruptcy.

The CFO generally terminates collection activity on a debt discharged in bankruptcy, regardless of the amount. USAID may continue collection activity, however, subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice by the Office of the USAID General Counsel if he or she believes that any claims or offsets might have survived the discharge of a debtor.

Subpart F—Discharge of Indebtedness and Reporting Requirements

■ 41. Revise § 213.35 to read as follows:

§ 213.35 Discharging indebtedness—general.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the CFO must take all appropriate steps to collect such debt, including (as applicable), the following:

(1) Administrative offset;

(2) Tax-refund offset;

(3) Offset of Federal salary;

(4) Referral to private collection contractors;

(5) Referral to Federal Departments or Agencies that are operating a debt-collection center;

(6) Reporting delinquencies to credit-reporting bureaus;

(7) Garnishing the wages of a delinquent debtor; and

(8) Litigation or foreclosure.

(b) The CFO will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record that are securing the debt. Discharge of indebtedness is distinct from the termination or suspension of collection activity, and the Internal Revenue Code might apply. When the CFO suspends or terminates collection action on a debt, the debt remains delinquent, and USAID may pursue further collection action at a later date in accordance with the standards set forth in this part. When a debt is discharged in full or in part, further collection action is prohibited, and USAID must terminate debt-collection action.

■ 42. Revise § 213.36 to read as follows:

§ 213.36 Reporting to Department of the Treasury's Internal Revenue Service.

Upon discharge of indebtedness, USAID must report the discharged debt as income to the debtor to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. USAID may request Fiscal Service to file such a discharge debt report to the IRS on the Agency's behalf.

Subpart G—Referrals to the U.S. Department of Justice

■ 43. Revise the heading for subpart G to read as set forth above.

■ 44. Amend § 213.37 by revising the section heading and paragraph (a) to read as follows:

§ 213.37 Referrals to the U.S. Department of Justice.

(a) The CFO, through USAID's cross-servicing agreement with Fiscal Service and by direct action, refers to DOJ for litigation all claims on which the Federal Government has taken aggressive collection actions but which could not be collected, compromised, suspended, or terminated. USAID makes such referrals as early as possible, consistent with aggressive Agency collection action, and within the period for bringing a timely suit against the debtor. Unless otherwise provided by DOJ's regulations or procedures, USAID refers for litigation debts of more than $2,500 but less than $1 million to DOJ's Nationwide Central Intake Facility, as required by the instructions for the Claims-Collection Litigation Report (CCLR). USAID shall refer debts of more than $1 million to the Civil Division at DOJ.

* * * * *

Subpart H—Mandatory Transfer of Delinquent Debt to U.S. Department of the Treasury

■ 45. Revise the heading for subpart H to read as set forth above.

■ 46. Revise § 213.38 to read as follows:

§ 213.38 Mandatory transfer of debts to Department of the Treasury's Bureau of the Fiscal Service—general.

(a) USAID's procedures call for the transfer of legally enforceable debt to Fiscal Service 90 days from the date provided on the Agency's initial written demand-for-payment notice issued to the debtor. A debt is legally enforceable if the Agency has made a final determination that the debt, in the amount stated, is due and there are no legal bars to collection action. A debt is not considered legally enforceable for purposes of mandatory transfer to Fiscal Service if a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited.

(b) Except as set forth in paragraph (a) of this section, USAID will transfer any debt covered by this part that is more than 120 days delinquent to Fiscal Service for debt-collection services. A debt is considered 120 days delinquent for purposes of this section if it is 120 days past due and is legally enforceable.

■ 47. Amend § 213.39 by revising the introductory text and adding a period at the end of paragraph (f).

The revision reads as follows:

§ 213.39 Exceptions to mandatory transfer.

USAID is not required to transfer a debt to the Financial Management Service (FMS) of the U.S. Department of the Treasury pursuant to § 214.37(b) during such period of time that the debt:

* * * * *

Kent Kuyumjian,

Deputy Chief Financial Officer.

[FR Doc. 2021–11245 Filed 6–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9950]

RIN 1545–BP98

Mandatory 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a federally declared disaster. This document also contains final regulations clarifying the definition of ''federally declared disaster.'' These final regulations affect individuals who reside in or were killed or injured in a disaster area, businesses that have a principal place of business in a disaster area, relief workers who provide assistance in a disaster area, or any taxpayer whose tax records necessary to meet a tax deadline are located in a disaster area.

DATES:

Effective Date: These regulations are effective on June 11, 2021.

Applicability Date: The date of applicability for the amendment to the Procedure and Administration Regulations under section 7508A is December 21, 2019, as explained below in **SUPPLEMENTARY INFORMATION.**

The date of applicability for the amendment to the Income Tax Regulations under section 165 of the Code to clarify the definition of the term ''federally declared disaster'' is June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew C. Keaton at (202) 317–5404 (not a toll-free number).

SUPPLEMENTARY INFORMATION: