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SOURCE: 67 FR 47258, July 18, 2002, unless otherwise noted.

Subpart A—General Provisions**§ 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:

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(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(1) 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.

[86 FR 31140, June 11, 2021]

§213.2 Definitions.

(a) *Administrative offset* means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(b) *Administrative wage garnishment* means the process by which federal agencies require a private sector employer to withhold up to 15% of an employee's disposable pay to satisfy a delinquent debt owed to the federal government. A court order is not required.

(c) *Agency* means the United States Agency for International Development (USAID).

(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

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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."

[67 FR 47258, July 18, 2002, as amended at 86 FR 31140, June 11, 2021]

§ 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).

(b) The remedies and sanctions available to the Agency under this part for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcus-

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able, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

[67 FR 47258, July 18, 2002. Redesignated and amended at 86 FR 31140, June 11, 2021]

§ 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.

[86 FR 31141, June 11, 2021]

§ 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.

[86 FR 31141, June 11, 2021]

§ 213.6 Omission not a defense.

Failure by USAID to comply with any provision of this part is not available to a debtor as a defense against payment of a debt.

[67 FR 47258, July 18, 2002. Redesignated at 86 FR 31141, June 11, 2021]

Subpart B—Collection Actions

§ 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.

(b) The CFO maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and its final disposition. Information on an individual may be disclosed only for purposes that are consistent with this part, the Privacy Act of 1974 and other applicable law.

[67 FR 47258, July 18, 2002. Redesignated and amended at 86 FR 31141, June 11, 2021]

§ 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:

- (1) The amount, nature and basis of the debt;
- (2) The right of the debtor to inspect and copy records related to the debt;
- (3) The right of the debtor to discuss and propose a repayment agreement;
- (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;

(6) The instructions for making electronic payment;

(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;

(9) The intention of USAID to use non-centralized administrative offset to collect the debt if appropriate and, if not, the referral of the debt 90 days after the Bill for Collection or demand letter to the Financial Management Service in the Department of Treasury who will collect their administrative costs from the debtor in addition to the amount owed USAID and use all means available to the Federal Government for debt collection including administrative wage garnishment, use of collection agencies and reporting the indebtedness to a credit reporting bureau (see § 213.14);

(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.

[67 FR 47258, July 18, 2002. Redesignated and amended at 86 FR 31141, June 11, 2021]

§ 213.9 Agency review requirements.

(a) For purposes of this section, whenever USAID must afford a debtor

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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.

(b) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although USAID will carefully document all significant matters discussed at the hearing.

(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.

(d) In those cases when an oral hearing is not required by this section, USAID shall accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

(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.

[67 FR 47258, July 18, 2002. Redesignated and amended at 86 FR 31141, June 11, 2021]

§ 213.10 Aggressive collection actions; documentation.

(a) USAID takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of USAID's activities. USAID cooperates

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with other Federal agencies in their debt collection activities.

(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.

[67 FR 47258, July 18, 2002. Redesignated and amended at 86 FR 31141, June 11, 2021]

§ 213.11 Interest, penalties, and administrative costs.

(a) *Interest.* USAID will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(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.

(2) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(3) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts including charges assessed by Treasury in cross-servicing USAID

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debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments and Indian tribes. These costs include both direct and indirect costs.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owned by State and local governments and Indian tribes, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(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.

[67 FR 47258, July 18, 2002. Redesignated and amended at 86 FR 31142, June 11, 2021]

§ 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 consid-

eration 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.

[86 FR 31142, June 11, 2021]

§ 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 underwithholding 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

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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.

(i) [Reserved]

(b) [Reserved]

[86 FR 31142, June 11, 2021]

§ 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:

(a) Send demand letters on U. S. Treasury letterhead and telephone debtors;

(b) Refer accounts to credit bureaus;

(c) Skiptracing;

(d) Purchase credit reports to assist in the collection effort;

(e) Refer accounts for offset, including tax refund, Federal employee salary, administrative wage garnishment, and general administrative offset under the Treasury Offset Program.

(f) Refer accounts to private collection agencies;

(g) Refer accounts to DOJ for litigation;

(h) Report written off/discharged debts to IRS on the appropriate Form 1099;

(i) Take any additional steps necessary to enforce recovery; and

(j) Terminate collection action, as appropriate.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31143, June 11, 2021]

§ 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.

(a) The following information is provided to the credit reporting bureaus:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

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

(1) Taken reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notified the debtor in writing that:

(i) The designated USAID official has reviewed the claim and has determined that it is valid and overdue;

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(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.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31143, June 11, 2021]

§ 213.16 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt, the CFO may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to other agencies and to collection agencies only for collection purposes.

§ 213.17 Liquidation of collateral.

Where the CFO holds a security instrument with a power of sale or has physical possession of collateral, he or she may liquidate the security or collateral and apply the proceeds to the overdue debt. USAID will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The CFO will give the debtor reasonable notice of the sale and an accounting of any surplus pro-

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ceeds and will comply with any other requirements of law or contract.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31143, June 11, 2021]

§ 213.18 Suspension or revocation of eligibility for loans and loan guarantees, licenses or privileges.

Unless waived by the CFO, USAID will not extend financial assistance in the form of a loan or loan guarantee to any person delinquent on a nontax debt owed to a Federal agency. USAID may also suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the CFO may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with USAID or engaging in programs USAID sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The CFO will report the failure of any surety to honor its obligations to the Treasury Department for action under 31 CFR 332.18.

§ 213.19 Installment payments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties and administrative costs, as required by § 213.11, will be collected in a single payment. However, where the CFO determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the CFO may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the CFO agrees to accept payment by installments, the CFO may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of

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default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the CFO determines that a longer period is required. Installment payments of less than \$50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the CFO determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the CFO will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31143, June 11, 2021]

Subpart C—Administrative and Salary Offset

§ 213.20 Administrative offset of non-employee debts.

This subpart provides for USAID's collection of debts by administrative offset under the Federal Claims Collection Standards, other statutory authorities and offsets or recoupments under common law. It does not apply to offsets against employee salaries covered by §§ 213.21, 213.22 and 213.23 of this subpart. USAID will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract. USAID will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (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) Offsets may be initiated only after the debtor has been given:

(i) The opportunity to inspect and copy agency records related to the debt;

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

(iii) The opportunity to make a written agreement to repay the debt.

(3) The provisions of paragraphs (a)(1) and (2) of this section may be omitted when:

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

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offsets conducted under paragraph (g) of this section, USAID first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, USAID shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the USAID.

(4) When USAID previously has given a debtor any of the required notice and review opportunities with respect to a particular debt, USAID need not duplicate such notice and review opportunities before administrative offset may be initiated.

(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 inter-agency offsets from an employee's salary in accordance with the procedures contained in §§ 213.22 and 213.23.

(c) *Alternative repayment.* The CFO may, at the CFO's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the CFO may consider such factors as the amount of the debt, the length of the proposed repayment period, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The CFO may require financial documentation from the debtor before considering the repayment arrangement.

(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.

(2) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(3) The CFO may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(4) The CFO will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

(e) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the CFO on a case-by-case basis.

(f) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that creditor agencies conduct, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor Agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt.

(2) Before requesting a payment authorizing agency to conduct a non-centralized administrative offset, USAID's regulations provides that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (a) of this section; and

(ii) The payment authorizing agency has received written certification from the creditor Agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor Agency has fully complied with its regulations concerning administrative offset.

(3) USAID as a payment authorizing agency will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to USAID's program, or would otherwise be contrary to law.

(4) When collecting multiple debts by non-centralized administrative offset, USAID will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case,

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particularly the applicable statute of limitations.

(g) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (a) of this section, USAID may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and “flag” a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31143, June 11, 2021]

§ 213.21 Employee salary offset—general.

(a) *Purpose.* This section establishes USAID's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(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).

(c) *References.* The following statutes and regulations apply to USAID's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR part 550, subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 31 CFR parts 900 through 904, the Federal Claims Collection Standards.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31144, June 11, 2021]

§ 213.22 Salary offset when USAID is the creditor Agency.

(a) *Due process requirements—Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, USAID will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States that will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements that are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to due process requirements—pay and allowances.* The procedural requirements of paragraph (a) of

this section are not applicable to overpayments of pay or allowances caused by the following:

(1) Any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee;

(2) Routine intra-agency adjustment in pay or allowances that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred with the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the employee is provided written notice of the nature and amount of the adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if at the time of such adjustment, or as soon thereafter as practical, the employee is provided written notice of the nature and amount of the adjustment.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by mail and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

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

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate USAID official and will be included in the debt file);

(7) The right to a hearing conducted by a hearing official not under the control of USAID, if a request is filed;

(8) The method and time for requesting a hearing;

(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;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid or deducted for the debt which are later waived or found not owed to the United States

will be promptly refunded to the employee.

(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.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(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.

(2) Written decisions provided after a request for hearing will, at a minimum,

state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(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.

(h) *Method and source of collection.* A debt will be collected in a lump sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the CFO and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than \$50 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a

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debt in a lump sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (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.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(1) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, USAID will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (e.g., retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 213.20.

(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.

(2) Administrative costs will be assessed if the debt is referred to Treasury for cross-servicing.

(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.

(o) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights that the employee may have under either the procedures in this section or any other provision of law.

(p) *Refunds.* USAID will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(q) *Time limit for commencing recovery by salary setoff.* USAID will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31144, June 11, 2021]

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

(a) USAID will use salary offset against one of its employees that is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the

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amount) and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met. The creditor Agency must also advise USAID of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(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.

(c) *Processing of the claim by USAID—*

(1) *Incomplete claims.* If USAID receives an improperly completed request, the requesting (creditor) Agency will be requested to supply the required information before any salary offset can be taken.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. USAID will not review the merits of the creditor Agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. USAID will not assess a handling or any other related charge to cover the cost of its processing the claim.

(d) *Employees separating from USAID before a debt to another agency is collected—*(1) *Employees separating from Government service.* If an employee begins separation action before USAID collects the total debt due the creditor Agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor Agency will be liquidated from subsequent payments of any nature due the employee from USAID in accordance with § 213.22;

(ii) If the total amount of the debt cannot be recovered, USAID will certify to the creditor Agency and the employee the total amount of USAID's collection; and

(iii) If USAID is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, the Foreign Service Re-

tirement Fund, or other similar payments, it will provide such information to the creditor Agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an USAID employee transfers to another Federal agency before USAID collects the total amount due the creditor Agency, USAID will certify the total amount of the collection made on the debt. It is the responsibility of the creditor Agency to ensure that the collection is resumed by the new employing agency.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31144, June 11, 2021]

Subpart D—Compromise of Claims

§ 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.

[86 FR 31145, June 11, 2021]

§ 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:

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(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).

[86 FR 31145, June 11, 2021]

§ 213.26 Payment of compromised claims.

The CFO normally will not approve a debtor's request to pay a compromised claim in installments. However, where the CFO determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved.

§ 213.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 213.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised,

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USAID will prepare and execute a release on behalf of the United States. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against USAID and its officials related to the transaction giving rise to the compromised debt.

Subpart E—Suspension or Termination of Collection Action

§ 213.29 Suspension—general.

The CFO may suspend or terminate the Agency's collection actions on a debt where the outstanding debt principal does not exceed \$100,000. Unless otherwise provided by DOJ delegations or procedures, the CFO refers requests for suspension of debts exceeding \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. If prior to referral to DOJ, USAID determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. The CFO may waive the assessment of interest, penalties, and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31145, June 11, 2021]

§ 213.30 Standards for suspension of collection action.

(a) The CFO may suspend collection action on a debt when:

- (1) The debtor cannot be located;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, the CFO may suspend collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) The CFO will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits USAID from collecting the debt during that time. The CFO will ordinarily suspend collection action during the pendency of his or her consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(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:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(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.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31145, June 11, 2021]

§ 213.31 Termination—general.

The CFO may terminate collection actions including accrued interest, penalties and administrative costs, where the debt principal does not exceed \$100,000. If the debt exceeds \$100,000, USAID obtains the approval of DOJ in order to terminate further collection

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actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31145, June 11, 2021]

§ 213.32 Standards for termination of collection action.

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

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed; or

(f) The debt against the debtor has been discharged in bankruptcy.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31145, June 11, 2021]

§ 213.33 Permitted actions after termination of collection activity.

Termination of collection activity ceases active collection of the debt. Termination does not preclude the agency from retaining a record of the account for purposes of:

(a) Selling the debt if the CFO determines that such sale is in the best interests of USAID;

(b) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

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(c) Offsetting against future income or assets not available at the time of termination of collection activity; or

(d) Screening future applicants for prior indebtedness.

§ 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.

[86 FR 31145, June 11, 2021]

Subpart F—Discharge of Indebtedness and Reporting Requirements

§ 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

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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.

[86 FR 31146, June 11, 2021]

§ 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.

[86 FR 31146, June 11, 2021]

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

§ 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.

(b) The CFO will clearly indicate on the CCLR the actions the DOJ should take on the referred claim.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31146, June 11, 2021]

§ 213.39

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

§ 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.

[86 FR 31146, June 11, 2021]

§ 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:

- (a) Is in litigation or foreclosure;
- (b) Is scheduled for sale;
- (c) Is at a private collection contractor;
- (d) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center;
- (e) Is being collected by internal offset; or
- (f) Is covered by an exemption granted by Treasury.

[67 FR 47258, July 18, 2002, as amended at 86 FR 31146, June 11, 2021]