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## **AGENCY FOR INTERNATIONAL DEVELOPMENT**

### **22 CFR Part 240**

#### **USAID Sovereign Loan Guarantees – Standard Terms and Conditions**

**AGENCY:** Agency for International Development (USAID).

**ACTION:** Final rule.

**SUMMARY:** This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees to be issued for the benefit of Ukraine.

**DATES:** Effective September 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** D. Bruce McPherson, Office of the General Counsel, U.S. Agency for International Development, Washington, DC 20523-6601; tel. 202-712-1611, fax 202-216-3055.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of section 7034(o)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, P.L. 114-113), the United States of America, acting through the U.S. Agency for International Development, may issue certain loan guarantees applicable to sums borrowed by Ukraine (the “Borrower”), not exceeding an aggregate total of U.S. \$1 billion in principal amount. Upon issuance, the loan guarantees shall ensure the Borrower’s repayment of 100% of principal and interest due

under such borrowings and the full faith and credit of the United States of America shall be pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

### **List of subjects in 22 CFR Part 240**

Foreign aid, Foreign relations, Guaranteed loans, Loan programs-foreign relations.

### **Authority and issuance**

Accordingly, part 240 is added to title 22, chapter II, of the Code of Federal Regulations, to read as follows:

## **PART 240 -- SOVEREIGN LOAN GUARANTEE – STANDARD TERMS AND CONDITIONS**

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Appendix A to Part 240 – Application for Compensation

**Authority:** Section 7034(o) (1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114-113).

**§ 240.1 Purpose.**

The purpose of the regulations in this part is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Borrower, pursuant to section 7034(o) (1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114-113) (the “Authority”). The loan guarantees will be issued as provided herein pursuant to a Loan Guarantee Agreement signed on June 3, 2016, between the United States of America and Ukraine (the “Loan Guarantee Agreement”). The loan guarantee will apply to sums borrowed during a period beginning on the date that the Loan Guarantee Agreement enters into force and ending thirty days after such date, not exceeding an aggregate total of one billion United States Dollars (\$1,000,000,000) in principal amount. The loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

**§ 240.2 Definitions.**

Wherever used in the standard terms and conditions set out in this part:

*Applicant* means a Noteholder who files an Application for Compensation with USAID, either directly or through the Fiscal Agent acting on behalf of a Noteholder.

*Application for Compensation* means an executed application in the form of appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 240.8.

*Borrower* means Ukraine.

*Business Day* means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

*Date of Application* means the date on which an Application for Compensation is actually received by USAID pursuant to § 240.15.

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

*Eligible Note(s)* means [a] Note[s] meeting the eligibility criteria set out in § 240.4.

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

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

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

*Guarantee* means the guarantee of USAID pursuant to the Authority.

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

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

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

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

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

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

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

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

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

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

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

### **§ 240.3 The Guarantee.**

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

**§ 240.4 Guarantee eligibility.**

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

Eligible Note status:

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

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

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

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

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

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer; Assistant Administrator and Deputy Assistant Administrator, Bureau for Economic Growth, Education and Environment; Assistant Administrator, Bureau for Europe and Eurasia; Director and Deputy Director, Office of Development Credit; and such other individual(s)

designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

**§ 240.5 Non-impairment of the Guarantee.**

After issuance of a Guarantee, that Guarantee will be an unconditional, full faith and credit obligation of the United States of America, and will not be affected or impaired by any subsequent condition or event. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder. Moreover, the Guarantee shall not be affected or impaired by:

- (a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee; or
- (b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes.

**§ 240.6 Transferability of Guarantee; Note Register.**

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new

Noteholder is entered on the Note Register. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

**§ 240.7 Fiscal Agent obligations.**

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

**§ 240.8 Event of Default; Application for Compensation; payment.**

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than the Guarantee Payment Date. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

**§ 240.9 No acceleration of Eligible Notes.**

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

**§ 240.10 Payment to USAID of excess amounts received by a Noteholder.**

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

**§ 240.11 Subrogation of USAID.**

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

**§ 240.12 Prosecution of claims.**

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

**§ 240.13 Change in agreements.**

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

**§ 240.14 Arbitration.**

Any controversy or claim between USAID and any Noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

**§ 240.15 Notice.**

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Ukraine Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Education and Environment, United States Agency for International Development, Washington, DC 20523-0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

**§ 240.16 Governing Law.**

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

**Appendix A to Part 240—Application for Compensation**

**United States Agency for International Development**

**Washington, DC 20523**

Ref: Guarantee dated as of \_\_\_\_, 20\_\_:

Gentlemen: You are hereby advised that payment of \$\_\_\_\_\_ (consisting of \$\_\_\_\_\_ of principal, \$\_\_\_\_\_ of interest and \$\_\_\_\_\_ in Further Guaranteed Payments, as defined in § 240.02 of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on \_\_\_\_\_, 20\_\_, on \$\_\_\_\_\_ Principal Amount of Notes issued by Ukraine (the “Borrower”) held by the undersigned. Of such amount \$\_\_\_\_\_ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 240.08 of said Guarantee, for payment of \$\_\_\_\_\_, representing \$\_\_\_\_\_, the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on \_\_\_\_\_ and that remains unpaid, and \$\_\_\_\_\_, the Interest Amount on such Note(s) that was due and payable by the Borrower on \_\_\_\_\_ and that remains unpaid, and \$\_\_\_\_\_ in Further Guaranteed Payments,<sup>1</sup> plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of \_\_% per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder or Fiscal Agent, as applicable].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

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<sup>1</sup> In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

[Name of Applicant]

By: \_\_\_\_\_

Name:

Title:

Dated:

**Dated: September 19, 2016.**

**D. Bruce McPherson,**

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*Office of the General Counsel,*

*U.S. Agency for International Development.*

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