Summary

Action: Final rule.

Agency: Department of State, Foreign Operations, and Related Programs, to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Republic of Tunisia pursuant to Section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016.

Dates: Effective August 1, 2016.


Supplemental Information: Pursuant to Section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. 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 Banque Centrale de Tunisie, acting on behalf of the Republic of Tunisia (the “Borrower”), not exceeding an aggregate total of U.S. $500 million in principal amount. Upon issuance, the loan guarantees shall ensure the Borrower’s repayment of 100% of principal and interest due under such loans, 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 239

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

Authority and Issuance

This final rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the certification or on the economic impact of this rule more generally. As a result, the conclusion in the certification memorandum for the proposed rule remains unchanged and a final regulatory flexibility analysis is not required and one has not been prepared.


Ronald K. Lorentzen,
Acting Assistant Secretary for Enforcement and Compliance.

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AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 239

Republic of Tunisia Loan Guarantees Issued Under Section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2016—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 the Republic of Tunisia pursuant to Section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016.

DATES: Effective August 1, 2016.


SUPPLEMENTARY INFORMATION: Pursuant to Section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. 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 Banque Centrale de Tunisie, acting on behalf of the Republic of Tunisia (the “Borrower”), not exceeding an aggregate total of U.S. $500 million in principal amount. Upon issuance, the loan guarantees shall ensure the Borrower’s repayment of 100% of principal and interest due under such loans, 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 239

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

Authority and Issuance

Accordingly, part 239 is added to title 22, chapter II, of the Code of Federal Regulations, to read as follows:

PART 239—REPUBLIC OF TUNISIA LOAN GUARANTEES ISSUED UNDER SECTION 7034(o) OF THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT OF 2016

Sec.
239.1 Purpose.
239.2 Definitions.
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239.4 Guarantee eligibility.
239.5 Non-impairment of the Guarantee.
239.6 Transferability of Guarantee; Note Register.
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239.9 No acceleration of Eligible Notes.
239.10 Payment to USAID of excess amounts received by a Noteholder.
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239.12 Prosecution of claims.
239.13 Change in agreements.
239.14 Arbitration.
239.15 Notice.
239.16 Governing Law.

Appendix A to Part 239—Application for Compensation


§ 239.1 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) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114-113). The loan guarantees will be issued as provided herein pursuant to the Loan Guarantee Agreement, dated June 6, 2016, between the United States of America and the Republic of Tunisia (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 five hundred million United States Dollars ($500,000,000) in principal amount. The loan guarantees shall ensure the Borrower’s repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

§ 239.2 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 § 239.8.

Borrower means Banque Centrale de Tunisie, acting on behalf of Republic of Tunisia.

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
United States Dollars equal to the total
borne by an Eligible Note.

Interest Amount means for any
Eligible Note the amount of interest
accrued on the Principal Amount of
Eligible Note the amount of interest
accrued on the date of the related Date of
Application.

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

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

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

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

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

Note(s) means any debt securities
issued by the Borrower.

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

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

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

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

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

§239.3 The Guarantee.

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

§239.4 Guarantee eligibility.

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

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

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

(3) Shall be approved and
authenticated by USAID and

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

§239.5 Non-impairment of the Guarantee.

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

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

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

§ 239.6 Transferability of Guarantee; Note Register.

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

§ 239.7 Fiscal Agent obligations.

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

§ 239.8 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 amounts received by a Noteholder against the Borrower under the related Note.

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

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

§ 239.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under the 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.

§ 239.12 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.

§ 239.13 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of this Agreement without the prior written consent of USAID.

§ 239.14 Arbitration.

Any controversy or claim between USAID and any Noteholder arising out of the 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.

§ 239.15 Notice.

Any communication to USAID pursuant to the Guarantee shall be in writing in the English language, shall refer to the Republic of Tunisia 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.

§ 239.16 Governing law.

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

Appendix A to Part 239—Application for Compensation

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 $ ___ of principal, $ ___ of interest and $ ___ in Further Guaranteed Payments, as defined in § 239.2 of the Standard Terms and Conditions of the above-mentioned Guarantee, was due on ___, 20__ on $ ___ Principal Amount of Notes issued by Banque Centrale de Tunisie, acting on behalf of the Republic of Tunisia (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 § 239.8 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, 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].

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.

By: ____________________________

Gayle Girod,
Assistant General Counsel
Office of the General Counsel
U.S. Agency for International Development


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1 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.