**Who Is Responsible for Commodity Loss, Damage, or Misuse?**

If a **third party** had custody of the commodity when the loss, damage, or misuse occurred, that third party must pay for the value of the commodity. A third party may be a person, company, governmental organization, or nongovernmental organization.

The **Awardee** must pay if:

* The loss/damage results from a failure on its part-directly or via distribution agency or contractor-to adequately protect or handle the commodities. The USAID mission has the authority and responsibility to determine whether the loss/damage could have been prevented. In making this determination, USAID will consider the normal commercial practices in the country of distribution, and the limitations inherent in the Awardee’s administrative capabilities and financial resources.
* It used the commodity for a purpose not permitted under the approved Operational Plan.
* It failed to make every reasonable effort to pursue collection of a claim against a negligent third party (e.g., if the Awardee lets third-party claims languish to the point that enforcement is difficult or impossible, if statutes of limitations applicable to such claims have run out, or if the negligent companies have gone bankrupt or been dissolved).

**When Must a Loss Claim be Filed?**

Unless otherwise approved by FFP in writing, Awardees should file a claim to recover allcommodities lost, damaged, or misused by a third party, or the equivalent monetary value of the commodity, **except** when the loss is caused by ***force majeure*** (or events beyond the control of the parties responsible that could not have been avoided by the exercise of due care, such as a flash flood). Force majeure must be documented.

It is extremely important that consultation and discussions with the USAID mission take place on a regular basis to review the criteria being used to determine if claim action is justified.

**What Is a “Reasonable Attempt”?**

A reasonable attempt or effort constitutes sending the initial claim (demand) letter and, if no suitable response is received, sending up to three additional, progressively stronger claim letters with not more than a 30-day interval between each one.

**Which Internal Losses Must Be Reported to USAID?**

Every loss must be reported.

* Each loss valued at **less than US$500** is reported only on the quarterly Loss Status Report, which is submitted to USAID via the QWICR software within 30 days of the close of the quarter.
* Each loss valued at **US$500 or greater** is reported quarterly on the DMCR (Damaged or Misused Commodities Report), which is submitted to USAID via the QWICR software within 30 days of the close of the quarter. These losses are **also** reported on the quarterly Loss Status Report.

**When Is Legal Action Necessary?**

If reasonable attempts fail to elicit a satisfactory response, legal actions must be pursued in the country where the loss occurred, unless:

* Liability of the third party is not provable.
* Costs of pursuing the claim would exceed the amount of the claim.
* The third party does not have sufficient assets to satisfy the claim.
* Maintaining legal action in the country's judicial system would seriously impair the Awardee's ability to conduct an effective program in the country.
* It is inappropriate for reasons relating to the judicial system of the country.

Note: Any decision not to take legal action (and the reasons for this decision) must be submitted in writing to FFP for review and approval**.**

**What Do I Do With the Proceeds From a Loss Claim?**

Any settlement proposed by the negligent third party for less than the full amount of the claim **must be approved by FFP**.

All commodity claim proceeds (reimbursements for losses) paid in the country of distribution should be wire-transferred to CCC. This means, for example, the value of a claim against a local transport company for the loss of commodities in its custody cannot be reimbursed through a “discount” to be applied on future transport costs. Contact the local USAID mission for the wire transfer form (a **sample** is provided on the following pages).

**TRANSFER OF FUNDS FROM PUBLIC LAW 480 TITLE II AWARDEES**

**TO THE COMMODITY CREDIT CORPORATION**

**U.S. DEPARTMENT OF AGRICULTURE**

**FOR WIRE TRANSFERS**

**Introduction.** As a Title II Awardee, you hereby agree to transfer to the Commodity Credit Corporation (CCC), an Agency and instrumentality of the U.S. Government within the U.S. Department of Agriculture (USDA), Title II funding resources approved under Title II grants and cooperative agreements. When it is determined by the Title II Agreement Officer, in consultation with the Agreement Officer Representative, that funds are to be returned to CCC, the applicable funding resources include Section 202(e) and Internal Transport, Storage, Distribution, and Handling (ITSH) grant funds, program income, and monetization proceeds. Ocean and inland transport funds may also be remitted to CCC using this form under the following conditions. **This form should not be used to remit funds collected from Title II marine claims that fall under USDA’s purview and a separate collections process with USDA’s Farm Service Agency, Contract Reconciliation Division in Kansas City, Missouri**.

**Source of funds (please circle one):**

1. As profit from the sale of monetized commodities, which represent the amount received that exceeded Title II program budgets approved in cooperative agreements
2. Through the sale of unfit commodity overseas
3. As settlement of a third party claim for loss and damage of commodities
4. As a result of program closure, suspension, or administrative termination
5. Residual program income
6. Other (please provide a detailed explanation below)

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**Awardee** **Title II Award Agreement Number Commodity Total Metric Tons**

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**Freight Grant Number** **Remittance Amount Country Commodity**

**(if applicable) (in U.S. dollars only) Purchase Order**

**(if available)**

**Authority:** Guidance contained in the Food for Peace Act and the U.S. Code of Federal Regulations (C.F.R.) 22 C.F.R. 211(8)(9)(11) and 22 C.F.R. 226.90, and the U.S. Agency for International Development’s Automated Directives System Chapters 625.3.4.1 and 303.3.22.

**Source of funds (other)**: Please describe in detail the circumstances by which these funds were generated (e.g., monetization revenue, program income, or inland losses) and are available for returning to CCC:

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Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Awardee

**TRANSFER OF FUNDS FROM PUBLIC LAW 480 TITLE II AWARDEES**

**TO THE COMMODITY CREDIT CORPORATION**

**U.S. DEPARTMENT OF AGRICULTURE**

**FOR WIRE TRANSFERS**

**Please wire funds to CCC using the following instructions:**

ABA Number: 021030004

Bank Name: Treasury, NYC

Business Function Code: CTR

Account No. (ALC): 12360004

Beneficiary: Commodity Credit Corporation

U.S. Department of Agriculture

1400 Independence Avenue, S.W.

Stop 0581

Washington, D.C. 20250-0581

**Please sign this form and e-mail a copy to:**

USDA/FSA/FMD, D. Reffitt ([Diane.Reffitt@kcc.USDA.GOV](mailto:Diane.Reffitt@kcc.USDA.GOV))

USAID Agreement Officer Representative (AOR)

USAID Mission/Regional Food for Peace Representative (M/R/FFP)

USAID/DCHA/FFP/POD, Greg Olson ([golson@usiad.gov](mailto:golson@usiad.gov))

USAID/DCHA/FFP/POD, L. Williams ([LWilliams@USAID.GOV](mailto:LWilliams@USAID.GOV))

Update: 12-03-2013