

§ 351.504 Grants.

(a) *Benefit.* In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit.* In the case of a grant, the Secretary normally will consider a benefit as having been received on the date on which the firm received the grant.

(c) *Allocation of a grant to a particular time period.* The Secretary will allocate the benefit from a grant to a particular time period in accordance with § 351.524.

§ 351.505 Loans.

(a) *Benefit—(1) In general.* In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. See section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *“Comparable commercial loan” defined—(i) “Comparable” defined.* In selecting a loan that is “comparable” to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans (e.g., fixed interest rate v. variable interest rate), the maturity of the loans (e.g., short-term v. long-term), and the currency in which the loans are denominated.

(ii) *“Commercial” defined.* In selecting a “commercial” loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government. However, the Secretary will not consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank, to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *“Could actually obtain on the market” defined—(i) In general.* In selecting a comparable commercial loan that the recipient “could actually obtain on the market,” the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans for both short-term and long-term loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary normally will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1 - q_n)(1 + i_r)^n / (1 - p_n)]^{1/n} - 1,$$

where:

n = the term of the loan;

i_b = the benchmark interest rate for uncreditworthy companies;

i_r = the long-term interest rate that would be paid by a creditworthy company;