

§ 25.401

(rounded to the nearest \$1,000.00 if desired, except for the final payment) and shall be payable either semi-annually or annually.

§ 25.401 Fees.

The interest rate on the Private Loan may include compensation for costs at prevailing market rates with the agreement of the Borrower and the Eligible Private Lender selected by the Borrower.

§ 25.402 Transferability.

Each Private Loan Note, with the Guaranty attached, shall be fully and freely transferable to any Permitted Guaranty Holder.

§ 25.403 Registration.

The Guaranty shall cease to be effective with respect to the Private Loan or any Private Loan Portion or any Derivative to the extent that the Private Loan or the respective Private Loan Portion or the respective Derivative, as the case may be, is used to provide significant support for a Non-Registered Obligation.

§ 25.404 Non-separability.

(a) The Guaranty shall cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed-Amount Equivalent to the extent that:

(1) The Guaranteed Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, is separated at any time from the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, in any way, directly or through the issuance of any Guaranteed-Amount Equity Derivative or any Guaranteed-Amount Debt Derivative; or

(2) Any holder of the Private Loan Note or any Private Loan Portion Note or any Derivative, as the case may be, having a claim to payments on the Private Loan receives more than 90 percent of any payment due to such holder from payments made under the Guaranty at any time during the term of the Private Loan.

31 CFR Subtitle A (7-1-10 Edition)

(b) Notwithstanding the preceding paragraph, if any Guaranteed-Amount Debt Derivative is issued, the Guaranty shall not cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed-Amount Equivalent, as the case may be, if both of the circumstances described in paragraphs (b)(1) and (b)(2) of this section.

(1) A Borrower shall have delivered to the Secretary of the treasury evidence, in form and substance satisfactory to the Secretary of the Treasury, that the Interest Rate Difference will be substantial.

(i) To be considered, the evidence must meet the following requirements:

(A) The Borrower must show that the Interest Rate Difference is directly attributable to paragraph (a) of this section being applied to the Private Loan, that is, that the Interest Rate Difference will exist even when all other financing terms of the Private Loan, including any collateralization of the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, are identical;

(B) When calculating the Interest Rate Difference, the Borrower must assume that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, will be collateralized by securities backed by the full faith and credit of the United States, unless the Borrower is legally prohibited from so collateralizing the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, or the Borrower has demonstrated to the satisfaction of the Secretary of the Treasury that the Borrower is unable to so collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent;

(C) If the Borrower is legally prohibited from collateralizing the Unguaranteed Loan Amount or the respective Loan Guaranteed Portion