

§ 253.13

by anyone but the guarantor will amortize the original principal balance (and interest accruing on it) of the U.S. note to the same extent that it amortizes the guaranteed note. The U.S. note will, among other things, contain provisions for adding to its principal balance all amounts the Program advances, or expenses it incurs, to protect the U.S. or accommodate the notemaker.

(3) *Security documents.* The Division will, at a minimum, require a pledge of all project property (or adequate substitute collateral). The Division will require such other security as it deems the circumstances of each notemaker and project require to protect the U.S. All security documents will secure the U.S. note. The security documents will, among other things, contain provisions for adding to the U.S. note all Program advances, expenditures, and expenses required to protect the U.S. or accommodate the notemaker.

(4) *Recourse.* Significant Program reliance, as a secondary means of repayment, on the net worths of parties other than the notemaker will ordinarily require recourse against those net worths. Recourse may be by a repayment guarantee or irrevocable letter of credit. Ordinarily, the Division will require recourse against: All major shareholders of a closely-held corporate notemaker, the parent corporation of a subsidiary corporate notemaker without substantial pledged assets other than the project property, and all major limited partners. The Division may also require recourse against others it deems necessary to protect the U.S. The principal parties in interest, who ultimately stand most to benefit from the project, should ordinarily be held financially accountable for the project's performance. Where otherwise appropriate recourse is unavailable, the conservatively projected net liquidating value of the notemaker's assets pledged to the Program must, in the Division's credit judgment, substantially exceed all projected Program exposure.

(c) *Dual-use CCF.* For a vessel, the Division may require annually depositing some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF

50 CFR Ch. II (10-1-10 Edition)

tax-deferral benefits, but also both gives the Program control of CCF withdrawals and recourse against CCF deposits and ensures an emergency refurbishing reserve (tax-deferred) for project property.

§ 253.13 Ability and experience requirements.

A notemaker and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Division deems necessary for successfully operating the project property and protecting the U.S. The Program will ordinarily not provide guarantees: For venture capital purposes; to a notemaker whose principals are all from outside the industry; or for a notemaker the majority of whose principals cannot document successful industry ability and experience of a duration, degree, and nature consistent with protecting the U.S.

§ 253.14 Economic and financial requirements.

(a) *Income and expense projections.* The Division's conservative income and expense projections for the project property's operation must prospectively indicate net earnings that can service all debt, properly maintain the project property, and protect the U.S. against the industry's cyclical economics and other risks of loss.

(b) *Working capital.* The Division's conservative assessment of an applicant's financial condition must indicate initial working capital prospectively sufficient to provide for the project property to achieve net earnings projections, fund all foreseeable contingencies, and protect the U.S. At the Division's discretion, some portion of projected working capital needs may be met by something other than current assets minus current liabilities (i.e., by a line or letter of credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(c) *Audited financial statements.* These will ordinarily be required for any notemaker with large or financially extensive operations whose financial condition the Division believes it cannot

otherwise assess with reasonable certainty.

(d) *Consultant services.* Infrequently, expert consulting services may be necessary to help the Division assess a project's economic, technical, or financial feasibility. The Division will select and employ the necessary consultant, but require the applicant to reimburse the Division. A subsequently approved application will not be closed until the applicant reimburses the Division. This cost may, at the Division's discretion, be included in a guaranteed note's amount. For a declined application, the Division may reimburse itself from the remaining 25 percent of the application fee.

§ 253.15 Miscellaneous.

(a) *Applicant.* Only the legal title holder of project property (or the lessee of an appropriate long-term financing lease) may apply for a guarantee. Applicants must submit an "Application for Fisheries Obligation Program Guarantee" to the appropriate NMFS Regional Financial Services Branch to be considered for a guaranteed loan.

(b) *Investigation and approval.* The Division shall do a due diligence investigation of every application it accepts and determine if, in the Division's sole judgment, the application is eligible and qualified. Applications the Division deems ineligible or unqualified will be declined. The Division will approve eligible and qualified applications based on the applicability of the information obtained during the application and investigation process to the programmatic goals and financial requirements of the program and under terms and conditions that, in the Division's sole discretion, protect the U.S. The Division will state these terms and conditions in its approval in principal letter.

(c) *Insurance.* All property and other risks shall be continuously insured during the term of the U.S. note. Insurers must be acceptable to the Division. Insurance must be in such forms and amounts and against such risks as the Division deems necessary to protect the U.S. Insurance must be endorsed to include the requirements the U.S., as respects its interest only, deems necessary to protect the U.S. (e.g., the

Program will ordinarily be an additional insured as well as the sole loss payee for the amount of its interest; cancellation will require 20 days' advance written notice; vessel seaworthiness will be admitted, and the Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc.)

(d) *Property inspections.* The Division will require adequate condition and valuation inspection of all property as the basis for assessing the property's worth and suitability for guarantee. The Division may also require these at specified periods during guarantee life. These must be conducted by competent and impartial inspectors acceptable to the Division. Inspection cost will be at an applicant's expense. Those occurring before application approval may be included in actual cost.

(e) *Guarantee terms and conditions.* The Division's approval in principle letter shall specify the terms and conditions of the guarantor's willingness to guarantee. These shall be incorporated in closing documents that the Division prepares. Terms and conditions are at the Division's sole discretion. An applicant's nonacceptance will result in disqualification for guarantee.

(f) *Noteholder.* The Division will, as a gratuitous service, request parties interested in investing in guaranteed notes to submit offers to fund each prospective guaranteed note. The Division and the applicant will, by mutual consent, choose the responsive bidder, which ordinarily will be the prospective noteholder whose bid represents the lowest net effective annual cost of capital. Until the Division has closed the guarantee, arrangements between an applicant and a prospective noteholder are a matter of private contract between them, and the Program is not responsible to either for non-performance by the other.

(g) *Closing—(1) Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(2) *Contracts.* The guaranteed note, U.S. note, and security documents will ordinarily be on standard Program forms that may not be altered without Divisional approval. The Division will