

approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets.<sup>2</sup>

3. Section 2(a)(35) defines the term "sales load" to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a DSC is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

4. Section 22(c) and rule 22c-1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a DSC may cause a redeeming unit holder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this section and rule.

5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d-1 was adopted to permit the sale of redeemable securities "at prices that reflect scheduled variations in, or elimination of, the sales load." Because rule 22d-1 may not be interpreted as extending to scheduled variations in deferred sales charges, applicants seek relief from section 22(d) to permit each Series to waive or reduce the DSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d-1 under the Act.

6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to permit the trustee to collect the DSC installments from distribution deductions or Trust assets.

7. Applicants believe that implementation of the DSC program in the manner described above would be fair and in the best interests of the unitholders of the Trusts. Thus, granting the requested order would be

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 11(c) prohibits any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses incurred in connection with the exchange.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. The amount of the sales charge per Unit collected from a holder at the time of any exchange or conversion of a Unit will be lower than the sales charge collected on the initial purchase of the same Unit at such time.

3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.

4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of Form N-1A (modified as appropriate to reflect the differences between unit investment trusts and

open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-5336 Filed 3-3-95; 8:45 am]

BILLING CODE 8010-01-M

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## SMALL BUSINESS ADMINISTRATION

### Preferred Lenders Program; FA\$TRAK Pilot Program

**AGENCY:** Small Business Administration.

**ACTION:** Notice of pilot program "FA\$TRAK".

**SUMMARY:** The Small Business Administration (SBA) is establishing a pilot program in which certain lenders will be permitted to use their own documentation and procedures to approve loans to small businesses using the Section 7(a) loan program in return for a reduced percentage of guaranty and other modifications to SBA's normal lending practices. This program will be called FA\$TRAK and will be considered a part of the Preferred Lenders Program.

**DATES:** This pilot will be effective on February 27, 1995 and will remain in effect for 2 years.

**FOR FURTHER INFORMATION CONTACT:** James W. Hammersley, Deputy Director, Office of Financing, U.S. Small Business Administration, 8th floor, 409 3rd St., SW., Washington, DC 20416; 202-205-6493.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration (SBA) is establishing the FA\$TRAK pilot program as part of the existing Preferred Lenders Program. This program is designed to streamline the process by which a lender receives a guaranty from SBA on a loan made to a qualifying small business. It is SBA's goal to utilize, to the maximum extent possible, existing documentation of participating lenders. Therefore, for FA\$TRAK loans lenders will be permitted to use their own application form(s), internal credit memoranda, notes, collateral documents, servicing documentation and liquidation documentation. The SBA will limit the use of government-mandated forms to those forms necessary to authorize the lender to disburse the loan with a government guaranty, record the guaranteed balance and loan status, and ensure that the borrower has agreed to those items required by law and regulation.

<sup>2</sup>Without an exemption, a trust selling unit subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only "redeemable securities."

Lenders participating in this pilot program will be given the ability to attach an SBA guaranty to an approved loan without having to submit the loan application to an SBA field office for a credit analysis or review. These loans will be sent to a single location for assignment of an SBA loan number and a determination of borrower eligibility.

In return for this flexibility and the ability to attach an SBA guaranty to a loan without prior review by SBA, lenders will agree to: limit the maximum loan amount to \$100,000; accept a maximum guaranty of 50 percent; and, waive payment on defaulted loans until after the lender has completed liquidation and SBA has reviewed the underlying documentation supporting the loan. The payment of interest on defaulted loans will be limited to 120 days. Lenders will be responsible for loan servicing and liquidation and will be required to indemnify SBA against any loss due to documentation drafting errors or negligent servicing and liquidation.

Many aspects of the existing SBA guaranteed loan program will continue to be utilized in FASTRAK. Borrowers who are not eligible for assistance under the existing program will not be eligible under FASTRAK. Lenders will be provided with general guidance on eligibility; however, the SBA loan processing office will make an eligibility determination. Lenders must negotiate interest rates that are within the SBA maximum interest rate ceiling. The current SBA policy on fees charged by the lender will remain in effect. SBA reserves the right to review any fees charged by a lender that the applicant considers to be unreasonable. If SBA determines that such fees are unreasonable, the lender agrees to return the excess to the applicant.

During the pilot program, lenders will not be permitted to sell the guaranteed portion of these loans into the secondary market because SBA will not have reviewed the loan documentation for these loans prior to such sale.

Lenders will be permitted to reduce their exposure to an existing borrower of the bank by making a FASTRAK loan only if the existing loan has always been current (no payment more than 29 days late).

The pilot program is scheduled to last 2 years, beginning on February 27, 1995. Prior to the termination date, SBA will review the experience with the program and determine if final rules and regulations will be developed.

The Rules and Regulations for the Preferred Lenders Program may be found at 13 CFR 120.400. During this pilot, various sections of SBA rules will

be suspended only for FASTRAK loans made by lenders participating in the FASTRAK program. The suspended sections include, but are not limited to, Section 120.102-2, 120.402-2, 120.403-2 and 120.403-4. A copy of the FASTRAK supplemental guaranty agreement and the program guide are attached to this notice. These documents provide more detailed information on the operation of the pilot program.

**Philip Lader,**  
*Administrator.*

### Small Business Administration

#### *Supplemental Guaranty Agreement FASTRAK*

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ ("the effective date") by and between the \_\_\_\_\_ ("Lender") and the U.S. Small Business Administration ("SBA"), an agency of the United States Government.

Whereas, this is a Supplemental Guaranty Agreement ("Supplemental Agreement") to the Loan Guaranty Agreement (SBA Form 750, dated 10-83) between the parties hereto, dated \_\_\_\_\_, ("the Guarantee Agreement") all the provisions of that SBA Form 750 are applicable to loans made by lender to small business concerns under the FASTRAK program, which is a process for approving, servicing and liquidating loans made under the Preferred Lenders Program (PLP), except as otherwise provided herein.

Whereas, the parties intend under this Supplemental Agreement for the Lender to perform the processing and most of the servicing and liquidating tasks associated with loans of \$100,000 or less in principal amount under the FASTRAK portion of the Preferred Lenders Program;

The parties agree as follows:

1. Under this Supplemental Agreement, Lender will be permitted to issue an SBA guaranty for any loan of \$100,000 or less in principal amount approved under FASTRAK procedures which meets the requirements and standards for FASTRAK loans. Except as specifically provided herein or in the Program Guide for FASTRAK, such loans are subject to all PLP Rules and Regulations as promulgated from time to time. Lender shall have the authority to issue a loan guaranty agreement and such other loan approval forms as may be necessary in order to permit a small business to receive a FASTRAK loan from the Lender.

2. In conjunction with each FASTRAK loan, the Lender shall be permitted to use its own application forms and other credit documents normally required by

it for approving loans, and its own note and other forms of loan documentation specifically including a settlement sheet and all other instruments which it uses to make, service and liquidate similar loans in a manner consistent with prudent lending practices and loan documentation. After Lender performs a thorough credit analysis relative to an application for a FASTRAK loan, it will forward such summary information as SBA requires in the Program Guide for FASTRAK to the SBA's FASTRAK Processing Center. SBA will endeavor to provide Lender with an SBA loan number within one working day of receipt of the summary information.

3. Lender assumes the responsibility for the completeness of each FASTRAK application package and all documentation it has relieved upon to make a credit judgment for a FASTRAK loan. Lender agrees to require approved borrowers to execute SBA Form 1920 prior to first disbursement {this form contains requirements that are mandated by Congress as a condition for receiving federal financial assistance}.

4. The percentage of SBA's guaranty of a loan guaranteed under this Supplemental Agreement shall not exceed fifty percent (50%) of the outstanding principal amount of the loan at the time of disbursement.

5. Approval of a loan under procedures established by this Supplemental Agreement shall constitute certification by the Lender, to the best of its professional knowledge and judgment at the time of loan approval, and in accordance with standard and prudent lending practices, that:

- a. The partners, principal owners, officers, and management of the applicant are of good character;
- b. There is a reasonable assurance of repayment by the borrower according to the terms determined by the lender;
- c. Without the guaranty of the SBA, the loan funds would not otherwise be available on reasonable terms to the applicant, or from the personal resources of the principal owner of the applicant; and
- d. The Lender is not and will not be in a superior lien position on any collateral securing the FASTRAK loan, unless the application file contains an explanation leading to the necessity of the subordinated lien position and a complete description of the lien positions as a result of the subordination.

6. Lender agrees that it will not approve any FASTRAK loan application on which the Applicant has noted any outstanding SBA business, disaster or development company loans

(guaranteed or otherwise), unless the outstanding SBA loans are current at the time of approval of the FASTRAK loan and the Lender does not possess any information that could indicate impending default on any such loan.

7. Lender shall service loans made under this Supplemental Agreement in accordance with the provisions of 13 C.F.R. § 120.404 {copy attached} of the PLP regulations and the Guarantee Agreement. Lender is permitted to perform any servicing action on any FASTRAK loan in its portfolio that does not confer a preference on the lender except that the Lender may not unilaterally compromise or sell the borrower's obligation for less than the amount owned on that obligation. Lender may use its own documents to record servicing changes as necessary.

8. Lender agrees to liquidate all SBA loans made under this Supplemental Agreement unless written instructions to the contrary are received from SBA. Liquidation will be conducted in a commercially reasonable manner and will be consistent with SBA's regulations and the Guarantee Agreement.

9. Lender agrees that interest on any FASTRAK loan made under this agreement will cease to accrue after 120 days from the date of the earliest uncured default. Further, Lender agrees to withhold a request for SBA to honor its guaranty on any loan made hereunder until final liquidation of the loan is completed by lender, including liquidation of all worthwhile collateral and recovery from any collectible obligor(s). Payment will be made after SBA has reviewed and approved all documentation supporting the making, closing, servicing and liquidating of the loan.

10. Lender agrees to provide SBA with a notification of loan status on an as requested basis (requests will initially be quarterly but may be changed to monthly after an electronic reporting mechanism is developed).

11. (a) Lender authorizes SBA to make periodic reviews and audits of all loans made under this Supplemental Agreement, including making copies and extracts from, all files, records, papers, or other relevant information. Lender authorizes all Federal, State and municipal authorities to furnish reports of examination, records and other information relating to the condition and affairs of the Lender and any desired information from reports, returns, files, and records of such authorities upon request by SBA.

(b) Lender agrees to photocopy a representative sample, as defined by SBA, of its FASTRAK loan files on an occasional basis, as determined by SBA and to send these copies to SBA.

12. The SBA guaranty on any loan made under this Supplemental Agreement shall commence immediately upon first disbursement by the Lender. After that time, denial of liability on the guaranty shall take place only upon the determination by SBA that the Lender is guilty of fraud, negligence, misrepresentation or other misconduct, or violation of any provision of this Supplemental Agreement, the Guaranty Agreement (SBA Form 750), SBA's Rules and Regulations, or the Program Guide for FASTRAK.

13. This agreement shall be effective for two years from the Effective Date, unless both parties agree in writing to a renewal prior to the expiration of the two-year period. Either party may terminate this agreement without cause

upon not less than ten (10) business days written notice by certified mail to the other party. Termination shall not affect the guaranty of any loan approved by the lender pursuant to this Supplemental Agreement.

14. The provisions of the Program Guide for FASTRAK are an integral part of this Supplemental Agreement and are incorporated herein by reference. Lender represents to SBA that it fully understands the Program Guide.

15. The guaranteed portion of loans approved pursuant to this Supplemental Agreement may not be sold in the Secondary Market.

16. All of the terms and conditions of the Guaranty Agreement (SBA Form 750) not expressly modified by this Supplemental Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Lender and SBA have caused this agreement to be duly executed as of the date written above.

\_\_\_\_\_  
Institution

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

U.S. Small Business Administration

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title



February 27, 1995  
U.S. Small Business Administration

BILLING CODE 8025-01-C

## I. Introduction

This program guide contains the policies, procedures and guidelines for implementation of FASTRAK. This guide is an integral part of the "Supplemental Guaranty Agreement for FASTRAK" and has been incorporated therein by reference. Participation in FASTRAK is limited to those lenders which have been approved by SBA for FASTRAK program participation and have executed the supplemental guaranty agreement.

FASTRAK is intended to increase the capital available to those businesses seeking loans of \$100,000 or less by permitting lenders to use their existing documentation and procedures and receive an SBA guaranty on the loan. Eliminating the requirement that SBA forms be used and application procedures be followed will allow lenders to reduce the cost of processing an SBA guaranteed loan. SBA hopes that reducing the cost of providing credit will encourage lenders to make smaller loans. To further reduce the lender's cost of doing business with SBA, lenders participating in FASTRAK will be permitted to use their own internal documentation for servicing actions and will be permitted to use their existing procedures for loan liquidation.

In exchange for the authorities described above and in recognition of the increased risk assumed by SBA, lenders participating in FASTRAK agree to accept a maximum guaranty of 50% on each loan. The guaranty of 50% is designed to give participating lenders the credit enhancement needed to approve certain applications while recognizing that SBA has not reviewed the credit or the documentation of the participating lender. Lenders desiring a guaranty higher than 50% for a specific case are permitted to use regular SBA procedures and forms to submit a loan to SBA for a guaranty up to 90%.

## II. Eligibility Requirements for FASTRAK

The Small Business Act provides certain requirements and restrictions on businesses which are entitled to government financial assistance. These considerations are described below.

### A. Size Standards

While the \$100,000 maximum loan amount will tend to limit the size of business interested in this type of loan, SBA's existing size standards which are described in Part 121 of Title 13 of the Code of Federal Regulations apply to all loans approved under FASTRAK. These size standards refer to the applicant and any affiliates.

### B. Eligible Loan Recipients

Lenders may not obtain a guaranty for loans to certain types of businesses. SBA rules on applicant eligibility are located in Section 120.101 and 120.102 of Title 13 of the Code of Federal Regulations. A copy is included as Appendix 1 to this guide. These rules are subject to change. Any questions regarding eligibility may be directed to the Sacramento FASTRAK Processing Center. The names and telephone numbers for the Processing Center staff are located in Appendix 2.

### C. Conflict of Interest

Lender may not use FASTRAK procedures to approve a loan to a firm in which any of the owners or managers are also an employee of the lender or SBA or own 10% or more of the stock of the lender. Furthermore, FASTRAK may not be used to make a loan to an associate or close relative (See 13 CFR 120.2-2, Appendix 3.) of either of the above described individuals.

### D. Ineligible Uses of Loan Proceeds

In general, loan proceeds may be used for the same purposes as loans approved without an SBA guaranty. Loan proceeds may not be used for the following purposes:

- a. To pay off inadequately secured creditors.
- b. To provide funds for distribution to the owners of a business unless these funds fully change the ownership of a business. Loans for a change of ownership are eligible provided there is a 100% change of ownership and the transfer is not between family members.
- c. To refund any debt owed to a Small Business Investment Company.
- d. To fund a gambling operation, except that businesses that receive less than one-third of their revenue from the commissions on the sale of state lottery tickets or businesses involved in state supervised gambling operations are eligible.
- e. To finance real estate held for investment, purchases of stock for investment, or to make loans to non-profit entities.

f. To fund a loan that would reduce lender's own or an affiliate's exposure to a business, unless the existing debt has always been current (no payments more than 29 days past due during the life of the credit). Refinancing of the debt owed to another lender is allowed, however, the FASTRAK participant must insure that the refinancing is beneficial for the borrower due to more reasonable terms or the transfer of a borrower's account relationship from other sources to the FASTRAK

participant. Care should be taken to avoid the appearance that the lender is using FASTRAK to bail itself out of an inadequately secured or poorly performing credit.

g. To fund a loan when funds are available from other sources on reasonable terms including disposal of unneeded business assets and use of personal resources provided there is no undue hardship involved in the use of personal funds. A self certification by the lender that funds would not otherwise be available on reasonable terms, as determined by the lender, is part of SBA Form 1920, FASTRAK Authorization and Request for Loan Number.

h. To fund a loan for the purchase or construction of real estate, the purchase or repair of equipment, or the refinancing of a loan used for those purposes, when the applicant business is not a 100% owner operator of the real estate or personal property being financed. In cases where the applicant is not a 100% owner operator, the loan may be submitted to SBA using regular 7(a) procedures. Loan proceeds may be used to finance real property with residential or rental space provided that in purchasing an existing building, residential and/or rental space must be less than 50% of total space, location must be conducive to the success of the business and other facilities must not be reasonably available and in constructing a building, the business must need a resident owner or manager and residential space must not exceed 33 $\frac{1}{3}$ % of the total or business growth is reasonably projected to indicate need for space in the reasonably near future, later additions are not feasible, and residential space does not exceed 33 $\frac{1}{3}$ % of total space.

- i. To make a loan to a recreational or amusement enterprise that is not open to the public and properly licensed.
- j. To replenish working capital funds used for any of the above purposes.

## III. Eligible Loan Types

FASTRAK procedures may be used for term loans or revolving credits made by the lender. Revolving credits must have a termination date that cannot exceed five years from the date of first disbursement. If the borrower remains creditworthy, a new revolving FASTRAK loan can be approved.

## IV. Terms and Conditions

### A. Loan Amount

The maximum loan amount that may be approved using the FASTRAK procedure is \$100,000.

**B. Percentage of SBA's Guaranty**

The guaranty on loans approved under FASTRAK will be limited to a maximum of 50%.

**C. Interest Rates**

(1) Loans approved using the FASTRAK procedure are subject to the same maximum interest rate as all SBA loans. For loans in excess of \$50,000 the maximum interest rate is 2.25 percentage points above the prime rate as published in the *Wall Street Journal* (WSJ) for loans with a maturity of less than seven years and 2.75 percentage points above the WSJ prime rate for loans with a maturity of seven years or longer. FASTRAK participants may use the additional interest rate spread authorized by 13 CFR 122.8-4(g) for loans approved using the FASTRAK procedure. Thus for loans of \$25,000 or less, the maximum rate is the WSJ prime plus 4.25 and 4.75 depending on the maturity and for loans over \$25,000 but not exceeding \$50,000 the maximum rate is the WSJ prime rate plus 3.25 and 3.75 depending on the maturity.

(2) Loans may have a fixed or variable rate of interest. If a variable interest rate is used, the lender may use the same base rate of interest used on similar loans made without an SBA guaranty.

**V. Fees****A. Guaranty Fee**

The guaranty fee will be 2% of the amount guaranteed for any loan with a maturity greater than one year. If the maturity is less than one year, the guaranty fee will be 1/4 of one percent. The fee splitting arrangement accorded lenders using regular procedures for loans under \$200,000 will not apply to FASTRAK. The guaranty fee must be paid within 90 days of the loan approval date or immediately after first disbursement, whichever is earlier for loans with a maturity of one year or greater. If the maturity is less than one year, the guaranty fee must be submitted with the application for an SBA loan number. Lender may charge Borrower for the guaranty fee only after Lender has paid the fee and an initial disbursement was made on the loan. This fee may be collected at the time of loan closing if there is a disbursement at closing.

**B. Late Payment Fee**

Lenders are permitted to charge borrowers a late payment fee of up to 5% of the payment amount for payments not received within 10 days of the due date.

**C. Extraordinary Servicing Fee**

An extraordinary servicing fee of up to 2% of the outstanding balance may be collected in cases involving construction, or using accounts receivable or inventory for collateral.

**D. Other Fees**

Application fees, commitment fees or prepayment fees are not permitted on term credits.

**E. Revolving Credit Fees**

Lenders will be permitted to use the same fee schedule for revolving credits approved by the lender without an SBA guaranty. These fees must be reasonable and are subject to review by SBA. Fees determined by SBA to be unreasonable must be returned by the lender to the borrower.

**VI. Loan Making, Servicing and Liquidation****A. Application Forms**

(1) Lenders are permitted to use their own application forms, internal credit memoranda and any other documentation necessary to make a credit determination. Lenders must insure that their application form includes language in which the applicant certifies that the information supplied is true and complete. This language must appear on the application form or on the financial statement from the applicant if a specific application form is not used. The form including this certification must be signed by the borrower.

(2) Lender will be required to obtain a signed copy of SBA Form 1919, FASTRAK Borrower Information Form from a sole proprietor, all partners, or each officer, director, or each holder of 20% or more of the voting stock of a corporate applicant, and any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business. The form must be part of the loan file, but does not have to be sent to the Processing Center. If the applicant answers "yes" to either of questions 1, 2, or 3, the loan may not be submitted under FASTRAK. It may be submitted to the local SBA office using regular processing procedures.

**B. Credit Decision**

(1) Lenders approved to use the FASTRAK procedure are responsible for a thorough and complete credit analysis. This analysis should be in the loan file and is subject to SBA review. An analysis for a loan that is approved should demonstrate that the loan can be repaid from the cash flow of the

business and that the applicant is of good character.

(2) Applications that are declined by the lender should be handled in the same manner the lender handles declined applications for conventional loans. These applications will not be considered applications for an SBA guaranteed loan.

**C. Notification to SBA**

(1) FASTRAK lenders may request a loan number from SBA by submitting an executed SBA Form 1920, FASTRAK Authorization and Request for Loan Number. This document serves both as an Authorization by the FASTRAK lender for the loan and a request to SBA to issue the loan number. This form will contain the information necessary for SBA to issue loan number and a certification that the funds are not available elsewhere on reasonable terms. This form may be faxed or sent to the Processing Center in Sacramento, California. The Processing Center is set up to provide a loan number to the FASTRAK lender by fax.

(2) SBA's budget is determined by Congress on an annual basis. SBA does not have authority to guaranty loans if it has run out of authority. While loan approval authority has been delegated to the FASTRAK lender, the loan does not have an SBA guaranty until the SBA Processing Center has issued a loan number. The processing center will not issue a loan number if funds are not available.

**D. Closing and Disbursement**

(1) FASTRAK participating lenders will use the same closing and disbursement procedures for FASTRAK loans as are used for their conventional loans. Loans may be closed by the lender's attorney and lenders are permitted to use their own closing documentation. This documentation includes, but is not limited to the lender's note, personal guaranty statements, mortgage, deed of trust or other security agreements, resolutions of the Borrower's Board of Directors, and a review of insurance requirements.

(2) FASTRAK participants must use the FASTRAK Authorization and Loan Agreement (SBA Form 1920) for all loans approved using the FASTRAK procedure. The signature block of the Form must contain the following language: "As a participant in the FASTRAK portion of the Preferred Lenders Program and agent of and on behalf of SBA."

(3) Lender must do the following prior to disbursement for each loan for which it issues an SBA guaranty:

A. Receive satisfactory evidence that there has been no unremedied adverse change since the date of the Application, or since any of the preceding disbursements, in the financial or any other condition of Borrower which would warrant withholding or not making any such disbursement or any further disbursement.

B. Receive evidence of the kind described below from an independent authoritative source which is sufficient to indicate to Lender that any collateral property is not in a special flood hazard area. If such evidence is not provided to Lender, Lender must obtain from Borrower agreement to obtain, and maintain, a Standard Flood Insurance Policy or other appropriate special flood hazard insurance in an amount and coverage equal to the lesser of (1) the insurable value of the property or (2) the maximum limit of coverage available. The Borrower can show that special flood hazard insurance has been acquired by submitting a copy of the policy or providing evidence of premium payment for the appropriate coverage to a licensed insurance agent. Borrower will not be eligible for either any future disaster assistance or SBA business loan assistance if the special flood hazard insurance is not maintained as stipulated herein throughout the entire term of its loan.

As evidence that the property is not located within a special hazard area subject to flooding, mudslides, or erosion, Lender may rely on a determination of special flood hazard area status by the applicant's property & casualty insurance company, real estate appraiser, title insurance company, a local government agency or other authoritative source acceptable to SBA which would ordinarily have knowledge of the special flood hazard area status for the property.

C. In the construction of a new building or an addition to a building, obtain agreement from the Borrower that the construction will conform with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings." Compliance with these requirements shall be evidenced by a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that the issuance of an occupancy permit is required and is subject to conformance with building codes and that the local building codes include the Seismic standards.

The following codes have been identified as being substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions: 1991 Uniform Building Code of the International Congress of Building Officials (ICBO); 1992 Supplement to the Building Officials and Code Administrators (BOCA) National Building Code; 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code.

D. Obtain agreement from the Borrower that it will, to the extent feasible purchase only American-made equipment and products with the proceeds of this loan.

E. For any loan involving construction of more than \$10,000, require borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance. Appendix 4 is a copy of Form 601. This form must be retained in the loan file, but does not have to be submitted to the FASTRAK Processing Center.

(4) The Small Business Act requires that all borrowers supply information regarding payments to loan packagers, accountants, appraisers, lawyers, or any other individual or entity that assisted the borrower in obtaining the loan. SBA Form 159 may be used for this purpose or the lender may use its own form as long as the information required by SBA Form 159 is supplied by the borrower and the service provider. Appendix 5 is a copy of Form 159. This form must be retained in the loan file, but does not have to be submitted to the FASTRAK Processing Center. If the applicant did not pay anyone to assist in the preparation of the loan, a written certification to that effect is sufficient to meet this requirement.

#### VII. Loan Servicing

A. Lenders will be permitted to service loans approved under FASTRAK using the same policies and procedures used for the lender's conventional loan portfolio. These policies and procedures must be based on prudent lending practices and the FASTRAK lender should be prepared to demonstrate to SBA that a servicing action taken on a FASTRAK loan is consistent with actions taken on loans in the lender's unguaranteed portfolio.

B. There are two actions that cannot be delegated to the FASTRAK participating lender. They are:

- (1) Selling or accepting a compromise settlement of any indebtedness guaranteed by SBA for a sum less than the total amount due on the loan, and
- (2) Enforcing compliance by the borrower with non-discrimination

regulations (13 CFR Part 113). This enforcement shall be subject to action by SBA.

C. SBA must be notified of any servicing action that alters any of the repayment terms of the loan. This includes, but is not limited to, changes in the interest rate on fixed rate loans or the interest rate spread on variable rate loans, maturity, or payment schedule. Notification should be sent to the servicing office responsible for the loan. The servicing office address will be provided to the FASTRAK lender along with the loan number.

D. Lender may release collateral as necessary. Due to the perception of a preference for the FASTRAK lender, care should be taken to fully document and justify any release of collateral for an SBA guaranteed loan that will subsequently be pledged for a conventional loan from the lender.

#### VIII. Loan Liquidation

A. A participating lender will be expected to fully liquidate any loan approved using FASTRAK. The lender must follow the same policies and procedures it uses for its non-guaranteed portfolio and should be prepared to demonstrate that it has done so. All liquidations of FASTRAK loans must be commercially reasonable.

B. Proceeds from the sale of collateral shall be applied first to the expenses associated with the liquidation, secondly, to the 120 days of interest permitted on the balance as of the earliest uncured default and finally to the principal balance. SBA will not pay to the lender an amount in excess of 50% of the loan balance at the time of default plus 120 days of interest at the rate in effect on the date of default. The Lender must absorb any expenses that exceed this amount.

C. Any action taken during the liquidation of a loan must be fully documented. SBA will review liquidation actions as part of the general review of a lender's use of the FASTRAK program. It is not necessary to provide a liquidation plan to SBA.

D. SBA reserves the right to purchase its guaranty prior to liquidation and to liquidate the loan using SBA personnel, however, it is expected that this right will be used only in very unusual circumstances.

E. Lender is permitted to take back a Note Receivable on the sale of collateral on any terms negotiated between the lender and the buyer. The Note Receivable will not have an SBA guaranty.

F. Lender is to insure that ordinary protective measures are taken. Expenses associated with the protection of

collateral may be recovered from the proceeds of the sale of collateral.

G. Collateral sales to the Lender's officers, directors, employees or stockholders (10% or greater) or a close relative of either are not permitted.

H. The selection of firms owned by officers, directors, employees or stockholders (10% or greater) to provide care and preservation services, legal assistance, or other services associated with the liquidation should be avoided. If it cannot be avoided, the lender must be prepared to justify the benefit to SBA of using the particular firm.

#### **IX. Payment of the SBA Guaranty**

A. Payment of the SBA guaranty will be made after the lender has fully liquidated all collateral and pursued all obligors and after SBA has reviewed the documentation that supports the loan. Payment will consist of the SBA guaranteed percentage of the balance remaining after liquidation plus up to 120 days of interest based on the balance outstanding at the time of the earliest uncured default if liquidation proceeds were insufficient to cover a full 120 days of interest.

B. To receive payment, lender must submit a transcript of account, a summary of liquidation activities, a detail of liquidation expenses, and a copy of the Note and relevant loan documents to the SBA office servicing the loan. The servicing office will review the account and prepare the paperwork required to wire SBA's portion of the loss to the lender.

#### **X. Lender Selection and Review**

A. Lenders will be selected for participation in FASTRAK based on their desire to increase lending under \$100,000 to small businesses, especially minority and women owned businesses. An SBA district office shall make a nomination to the Central Office, which will make a decision. A lender will receive the FASTRAK designation for its entire system. This may involve executing multiple copies of the supplemental guaranty agreement depending on the legal structure of the lender.

B. The loan approval authority in the supplemental guaranty agreement for FASTRAK will last for two years. At the end of two years, the activity will be reviewed and may be renewed for either one or two years. The servicing and liquidation provisions will last for the life of any loan approved using FASTRAK.

C. SBA will monitor the progress of the FASTRAK loans approved by each other. We will use the performance of loans approved under FASTRAK to

determine if a lender may continue to participate in FASTRAK. Lenders that violate the terms of the supplemental guaranty agreement, this guidebook, or SBA regulations as determined by SBA shall be removed from the program.

D. SBA reserves the right to make a periodic on-site review of the loan files for FASTRAK loans. SBA may, from time to time, ask FASTRAK lenders to photocopy documents in a file selected by SBA and send the copy to SBA for review. This procedure is intended to limit the intrusion on the lender by SBA reviewers and to reduce the cost to SBA of program monitoring. Lender acknowledges that the SBA review does not give rise to any estoppel claim, right or defense if SBA should determine that it will not honor its guaranty on a loan approved using FASTRAK.

E. If a problem develops with part of a lender's operation in one location, the lender will be notified and given a reasonable time to correct the problem. If the problem is not corrected, the lender's entire organization will be removed from FASTRAK.

#### **XI. Lender Reporting**

Lenders will be required to report the status and outstanding balance of each loan approved under FASTRAK on SBA form 1175. This form is submitted on a quarterly basis to the SBA field office. SBA is in the process of developing an electronic data interchange (EDI) system for lender reporting. FASTRAK lenders will be expected to use EDI after it has been implemented for SBA reporting.

#### **XII. Secondary Market**

Loans approved using the FASTRAK procedure may not be sold in the secondary market.

#### **XIII. Lender Mergers**

A lender's status as a participant in the FASTRAK will be reviewed at the time of a merger and a decision will be made regarding whether the new entity will be a participant in FASTRAK.

#### **XIV. IRS Tax Verification**

Lenders must verify tax returns of the business prior to disbursement of a FASTRAK loan. Tax verification procedures are included in Appendix 6. SBA has a cooperative agreement with the IRS to provide information within ten days. The key to a quick reply from the IRS is to ask for a transcript of the tax return, not a copy of the return and to write the words "SBA Loan Application" at the top of the form. Please report any problems with the tax verification system to the FASTRAK Processing Center or your local SBA district office. Lenders are reminded

that the letters "SBA" must be placed at the top of each request to insure expedited processing and that sole proprietorship information is obtained from a different SBA location than partnership or corporate tax information.

[FR Doc. 95-5337 Filed 3-3-95; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Aviation Proceedings; Agreements Filed During the Week Ended February 24, 1995**

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 50148.

*Date filed:* February 21, 1995.

*Parties:* Members of the International Air Transport Association.

*Subject:* COMP Telex Mail Vote 729.

*Proposed Effective Date:* April 1, 1995.

*Docket Number:* 50149.

*Date filed:* February 21, 1995.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC23 Reso/P 0686 dated January 27, 1995, Europe-Southeast Asia Resos r-1 to r-23.

*Proposed Effective Date:* April 1, 1995.

*Docket Number:* 50150.

*Date filed:* February 21, 1995.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC12 Telex Mail Vote 730, Germany-Canada Fares, r-1—076jj r-2—080rr.

*Proposed Effective Date:* April 1, 1995.

**Myrna F. Adams,**

*Acting Chief, Documentary Services Division.*

[FR Doc. 95-5429 Filed 3-3-95; 8:45 am]

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### **Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 24, 1995**

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth