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Railroad Rehabilitation and Improvement Financing Program; Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA 1999–5663]

RIN 2130–AB26

Railroad Rehabilitation and Improvement Financing Program; Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is issuing a final rule which implements the Railroad Rehabilitation and Improvement Financing Program (RRIF) to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. Eligible projects include: (1) acquisition, improvement or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops), (2) refinancing outstanding debt incurred for these purposes, or (3) development or establishment of new intermodal or railroad facilities.

The aggregate unpaid principal amounts of direct loans and loan guarantees made under this program cannot exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

EFFECTIVE DATE: The final rule is effective September 5, 2000.

FOR FURTHER INFORMATION CONTACT: JoAnne M. McGowan, Chief of Freight Programs Division, RDV–12, Office of Passenger and Freight Services, FRA, 1120 Vermont Avenue, NW, MailStop 20, Washington, D.C. 20590 (202–493–6379), or Joseph R. Pomponio, Senior Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, MailStop 10, Washington, D.C. 20590 (202–493–6065).

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

Prior to the enactment of the Transportation Equity Act of the 21st Century (''TEA 21''), Pub. L. No. 105–178 (June 9, 1998), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (the ''Act''), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 C.F.R. Part 260.

Section 7203 of TEA 21 replaces the existing Title V financing programs. This final rule strikes the language in existing part 260 and replaces it with new procedures and requirements to cover applications of financial assistance in the form of direct loans and loan guarantees consistent with the changes made to Title V of the Act by section 7203 of TEA–21.

The revised program is referred to in TEA 21 as the Railroad Rehabilitation and Improvement Financing Program (''RRIF Program''). The Secretary has delegated his authority under the RRIF Program to the FRA Administrator.

NPRM

The FRA published a notice of proposed rulemaking (NPRM) on May 20, 1999, in the **Federal Register** (64 FR 27488). Comments were filed by 92 commenters. FRA is now issuing this final rule concerning administration of the RRIF Program. This rule reflects the FRA's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the FRA by commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations. Paragraph references are as designated in the NPRM.

Discussion of Comments and Responses by Section

Section 260.9 Loan terms. Sixty-one commenters urged that the interest rate to be charged on direct loans made under the RRIF Program be set at the cost of money to the Government for debt obligations with terms equal to the term of the loan.

FRA Response: Although FRA anticipated that direct loans would be assessed interest rates equal to the cost of money to the Government, as determined by the rate on Treasury securities of a similar term, the proposed regulations did not so specify. In order to clarify FRA's intent in this regard, section 260.9 has been changed to specify the interest rate to be charged.

Section 260.23(o) Lender of last resort. Seventy-two commenters suggested that, as enacted by Congress, the RRIF Program was not intended to provide financial assistance only as a lender of last resort. Commenters noted that although in certain circumstances loans may be available from the private sector, the terms on which such loans are offered are prohibitive. Railroad assets typically have long economic lives (up to 30 years) while private sector loans, when available, offer no longer than a 7 year repayment period. Therefore, private sector financing of most railroad assets is not economically viable.

Also notably, comments submitted by four members of the Committee on Transportation and Infrastructure, House of Representatives, including: Bud Shuster, Chairman, James L. Oberstar, Ranking Member, Thomas Petri, Chairman, Ground Transportation Subcommittee, and Nick J. Rahall, II, Ranking Member, Ground Transportation Subcommittee, suggest that TEA–21 does not require that the RRIF Program be a lender of last resort and ask that this requirement be deleted. Further, those comments indicate that the ''central purpose of the program is to facilitate rail and rail-intermodal infrastructure improvements that will confer public benefits beyond simple considerations of commercial lending, and may not be able to attract sufficient private capital.''

FRA Response: Consistent with the intent of Congress FRA intends to implement this program in a way that will meet the needs of the rail industry for long term financing which is not available from the private sector. While FRA need not be a lender of last resort, it does not intend to replace private funding sources already available to the rail industry. Therefore, in order to

establish that private funding on terms necessary to the viability of the applicant's project is not available, FRA will require that railroad applicants provide a letter from a commercial lender denying funding for the project. Section 260.23(o) has been amended accordingly.

Sections 260.23, 25, & 29. Information to be provided with applications. Sixty commenters suggested that the amount of information required to be submitted with applications for assistance under the RRIF Program will prove to be an undue burden on small businesses. Commenters have suggested that FRA should limit the amount of information required and eliminate the requirement that financial statements be audited.

FRA Response: In an effort to reduce the burden on applicants while still assuring that adequate information is available to accurately evaluate each loan application and proposed project, FRA has amended sections 260.23(h) and 260.25(b)(1) of the regulation to provide that audited financial statements will only be required if they are available. Further, FRA has amended sections 260.25(b) and (c), and eliminated section 260.29.

Section 260.31 Investigation charge. Sixty commenters have suggested that the investigation charge set by FRA at ½% as permitted by statute is too high and may prove to be a burden on smaller applicants. Commenters suggested that the investigation charge be assessed based on actual cost to FRA to process each application.

FRA Response: In order to avoid any unnecessary burden of future applicants FRA will estimate the processing costs and advise applicant at the pre-application meeting of the amount of the charge. That charge will still be payable in two installments, ½ at the time the application is submitted and the remaining ½ within 60 days thereafter. Section 260.11 has been amended accordingly. Further, in order to provide applicant more flexibility in controlling the total administrative costs of each application, FRA has included a new Section 260.29, which provides applicants with the option of contracting with a third party financial consultant, with FRA approval, to prepare a financial evaluation of the project and the applicant. Cost savings to FRA as a result of receiving such an evaluation will be reflected as reductions to the investigation charge.

General Comments

Fifty-six commenters asked that the limitation imposed by section 260.53, which provides that the Administrator will only guarantee up to 80% of the total obligation, be deleted so that 100% of an obligation can be guaranteed.

FRA Response: The 80% limitation is imposed on all Federal loan guarantees by the Office of Management and Budget, as iterated in circular A–129. The FRA cannot guarantee more than 80%.

Sixty-four commenters requested that the calculation of the Credit Risk Premium be simplified so as to be easily understood.

FRA Response: The calculation of the Credit Risk Premium is based on a process which evaluates many indicators of the financial viability of the applicant. In order to accurately assess the risk of default associated with each loan or loan guarantee FRA must consider all aspects of the applicant's organization and business. Therefore, this estimation process necessarily is complex. However, FRA will provide potential applicants with estimates of the size of the Credit Risk Premium that may be required based on discussions at the preapplication meeting provided under section 260.19.

One commenter requested that FRA accept a note from an applicant as payment of the Credit Risk Premium in lieu of a cash payment.

FRA Response: Based on FRA's interpretation of the statutory language this option is not permitted. Section 502(e)(3) provides that ''the credit risk premium under this section shall be paid to the Secretary before the disbursement of loan amounts''. Acceptance of a note would not constitute payment.

Two commenters suggested that priority consideration be given to projects that would avoid the abandonment of a rail line; one commenter asked for priority for projects benefitting railroad employees, and one commenter requested that, FRA provide priority for a project included in a state transportation plan.

FRA Response: The types of projects identified for priority consideration in section 260.7 reflect the areas of priority detailed by the enabling legislation. FRA has elected not to add to these criteria at this time.

Two commenters asked that the cost of a right-of-way be made an eligible cost of the project that receives financial assistance under the RRIF Program.

FRA Response: The statutory language does not clearly state whether the cost of right-of-way acquisition may be considered as part of the project. While it is possible that in certain circumstances such costs could be considered eligible cost of the project, it is also possible that in other situations they would not. A determination regarding whether the costs of rights-of-way may be considered eligible costs will be made in each case after a careful review of the circumstances.

Three commenters suggested that the collection of a Credit Risk Premium is too heavy a burden to be placed on applicants and asked that FRA not charge a Credit Risk Premium.

FRA Response: Before FRA can disburse any direct loan or loan guarantee it must set aside such amounts as are necessary to offset anticipated costs to the Federal government of making such loans and guarantees. Under this program such funds may come from funds appropriated for this purpose by Congress, a Credit Risk Premium, or any combination of appropriated funds and Credit Risk Premium. Where no Congressional appropriation exists, and there is none for RRIF at this time, FRA cannot approve a loan or loan guarantee without collecting a Credit Risk Premium.

One commenter requested that FRA provide financial assistance under this program for terms of up to 30 years.

FRA Response: Section 502(g)(1) of the Act requires that the Administrator (as the Secretary's designee), shall not make a loan or a loan guarantee unless the Administrator has made a finding that repayment of the obligation is required to be made in a term of not more than 25 years.

One commenter questioned our consideration of the ''size'' of an applicant in determining the credit risk, and suggested that no application should be denied solely because of the applicant's size.

FRA Response: FRA recognizes that the RRIF Program is intended, in part, to provide financial assistance to small railroads and it will not use a small applicant's size as a basis to deny financial assistance. However, the size of the applicant is a significant factor which must be considered along with all other factors outlined in determining the credit risk of providing financial assistance. Size would also be important if the applicant were large and the amount of assistance sought by the applicant together with all other assistance already provided to large applicants would result in less than $1 billion being available to small railroads.

One commenter requested that the term ''common carrier'' be removed from the definition of a railroad provided in section 260.3(r), in order to permit railroad shortlines providing only contract carrier services to a limited number of small shippers to be

eligible for financial assistance under the RRIF Program.

FRA Response: Section 7203 of TEA–21, which established the RRIF Program by amending Title V of the Act, does not define ''railroad.'' However, section 102 of the Act, as amended, provides that ''as used in this Act'' * * * ''(7) 'railroad' means rail carrier subject to part A of subtitle IV of title 49, United States Code.'' FRA has no discretion to expand the definition provided by the Act but clarify the definition by incorporating the statutory definition.

One commenter asked that the term ''equipment'', as used in section 260.5, ''Eligible purposes,'' be defined to clarify that it does include railroad cars and locomotives.

FRA Response: The term ''equipment'' was not defined in the proposed regulations because it includes a variety of items which are used in the operation of a railroad. While rail cars and locomotives are certainly railroad equipment, further determinations regarding what will be considered ''equipment'' will be made as necessary.

One commentor suggests that the inclusion of all loans and loan guarantees into one cohort each fiscal year is inappropriate because the default of any obligation within that cohort will reduce the likelihood that other obligations will receive a rebate of their credit risk premium.

FRA Response: A default of any obligation in a cohort will produce losses that must be covered by the credit risk premiums collected from other obligations within that cohort. The fewer obligations a cohort contains, the greater the likelihood that a default will consume all the credit risk premiums and that none will remain to be returned to the borrowers. Similarly, a cohort containing more obligations is more likely to have sufficient credit risk premiums to cover the losses and still be able to provide a rebate. Therefore, FRA has determined that it will not necessarily limit cohorts to a one year period. Rather each cohort will remain open until FRA has determined that it contains an adequate pool of obligations, based on both size of the obligations and the total credit risk premiums collected, to increase the possibility that a rebate will be available upon the repayment of all the obligations contained in the cohort. Also, to that end separate cohorts will be established for direct loans and loan guarantees. Section 260.15 has been amended accordingly.

Regulatory Impact

E.O. 12866, SBREFA and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and is considered to be economically significant within the meaning of Executive Order 12866 and is a significant rule under DOT regulatory policies and procedures (44 Fed. Reg., February 26, 1979). Additionally, this is a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)) because the rule may have an annual effect on the economy of $100 million or more.

Executive Order 12866 requires that for all economically significant regulations, agencies provide an assessment, including the underlying analysis, of the costs and benefits anticipated from the regulatory action. In addition, the agency must analyze the costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulations. While the agency has not produced a quantified analysis of this rule, DOT has produced the following qualitative assessment:

Potential Benefits. The financing made available through this final rule may provide environmental and safety benefits, and avoid increased highway maintenance costs. Of the $3.5 billion made available for direct loans and loan guarantees, $1 billion is reserved for projects benefitting small railroads. Shortline and regional railroads are one of the transportation modes that connect rural America and small communities to the national railroad system. A recent survey by the American Association of State Highway and Transportation Officials has found that 200 small railroads need more than $2 billion in external financing to upgrade their track to safely accommodate the 286,000 pound cars that major carriers are now using. Shortline and regional railroads that cannot safely handle these heavier cars will lose traffic critical to their viability and continued operation. If these railroads are abandoned, the traffic will be moved by less energy efficient trucks. A 1991 FRA study entitled Rail vs. Truck Fuel Efficiency found that on routes typically served by shortline railroads, trains were 5.93 to 9 times more energy efficient than trucks.

Additional truck traffic may increase adverse health and environmental effects. It is unclear how significant the incremental changes in health and environmental effects will be because the agency has not estimated the incremental pollution reductions that may occur from this rule. In addition, some of the reductions that do occur are likely to be in sparsely populated areas.

This rule may also provide safety benefits by reducing track-related accidents. From 1986 through 1991, small railroads experienced over 3 track-related accidents for every million miles operated. During the same period, major railroads had only 1.45 track-related accidents for every million miles operated. Since 1991, the situation has worsened. From 1992 through 1996, shortline and regional railroads experienced more than 5 track-related accidents per million miles operated while major railroads had only 1.28. On the other hand, it is not clear that trucking the traffic carried by shortline and regional railroads would be less safe.

Potential Costs. There are administrative costs associated with this rule. Prospective borrowers will be required to file an application containing certain financial information. This information collection has been approved by the Office of Management and Budget. The approved control number is 2130–0548. The estimated annual burden hours are 5,881 hours and the annual costs are $543,866. The total estimated administrative costs to the Federal government are $325,000.

Default costs also may occur as a result of this rule. If the cost of borrowers' defaults exceeds the credit risk premiums collected there will be a cost to the federal government.

There are also opportunity costs associated with this rule, since it may reallocate finite resources to railroads that necessarily would have been spent elsewhere absent this rule. FRA has observed that the private sector will not provide funds to many railroads on terms that will support long term improvement projects. Under the assumption that private markets are working properly, this rule will displace more valuable investments and will result in costs to society. Because the private credit market generally allocates resources (including credit) efficiently to meet societal demand, only under certain circumstances (see examples below) may government intervention in the credit market increase societal benefits.

If one assumes that the private sector is not providing credit to railroads because an economic market failure exists, then government intervention may improve the outcome. Reasons for economic market failure of the credit market include information failures, externalities, economic disequilibrium, failure of competition and incomplete markets. Under these circumstances,

government intervention may generate positive net societal benefits through a combination of private and social benefits, taking into account the factors identified in the discussion of potential benefits above.

Cost-Benefit Comparison. Under Executive Order 12866, agencies may propose or adopt a regulation only upon a reasoned determination that the benefits of the regulation justify the costs. Based on numerous project benefit-cost analyses completed by State Departments of Transportation, DOT believes that the rule can lead to carefully selected projects that will generate benefits sufficient to outweigh the costs of this rule.

Future Analysis of this Program. FRA will periodically review the public benefits and costs of the RRIF program to ensure that there is a net societal benefit from this program. FRA recognizes that only under certain circumstances will government intervention in the credit market generate net societal benefits. Therefore, FRA will the reason for the failure of the market to provide credit to rail projects, and will assess the private and social costs and benefits of these projects to determine if they are likely to result in net societal benefits.

The Office of Management and Budget Circular A–94 establishes guidelines for analysis of the expected benefits and costs to society of Federal programs. The purpose of A–94 is to promote efficient resource allocation through well-informed decision-making by the Federal Government.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA has conducted a regulatory flexibility assessment of this final rule and FRA certifies that it does not have a significant impact on a substantial number of small entities.

It is not likely that small governmental entities will seek financial assistance under the RRIF Program. In response to a public notice on the enactment of the program, only large metropolitan areas, like the City of Indianapolis and the Memphis and Shelby County Port Commission, indicated an interest in RRIF financing. The cost to governmental entities of applying for the program would be minimal since borrowers will normally have available the information needed to prepare applications for funding.

In addition to small governmental entities, the small entities directly affected by this rule are class III railroads. The cost to small railroads will be minimal since the information needed to complete applications will normally be available. Moreover, participation in the RRIF Program is strictly voluntary. Therefore, FRA has concluded that there are no substantial economic impacts for small units of government, business, or other organizations.

Paperwork Reduction Act

This information collection has been approved by the Office of Management and Budget. The approved control number is 2130–0548. FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number.

Environmental Impact

FRA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related directives. This regulation meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, input by state and local officials, under Executive Orders 13132, is not warranted.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Unfunded Mandates Reform Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The final rules issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement was not required.

List of Subjects in 49 CFR Part 260

Loan programs—Transportation; Railroads.

The Final Rule

In consideration of the foregoing, Part 260 of Title 49, Code of Federal Regulations, is revised to read as follows:

PART 260—REGULATIONS GOVERNING LOANS AND LOAN GUARANTEES UNDER THE RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

Subpart A—Overview

Sec.

Subpart B—FRA Policies and Procedures for Evaluating Applications for Financial Assistance

Subpart C—Applications for Financial Assistance

Subpart D—Standards for Maintenance of Facilities Involved in the Project

Subpart E—Procedures To Be Followed in the Event of Default

Subpart F—Loan Guarantees—Lenders

Authority: 45 U.S.C. 821, 822, 823; 49 CFR 1.49.

Subpart A—Overview

§ 260.1 Program authority.

Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.*, authorizes the Secretary of Transportation to provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad. The Secretary's authority has been delegated to the Administrator of the Federal Railroad Administration, an agency of the Department of Transportation.

§ 260.3 Definitions.

As used in this part—

(a) *Act* means the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.*

(b) *Administrator* means the Federal Railroad Administrator, or his or her representative.

(c) *Applicant* means any State or local government, government sponsored authority or corporation, railroad, or group of two or more entities, at least one of which is a railroad, participating in a joint venture, that submits an application to the Administrator for a direct loan or the guarantee of an existing obligation under which it is an obligor or for a commitment to guarantee a new obligation.

(d) *Borrower* means an Applicant that has been approved for, and has received, financial assistance under this part.

(e) *Credit risk premium* means that portion of the total subsidy cost to the Government of a direct loan or loan guarantee that is not covered by Federal appropriations and which must be paid by Applicant or its non-Federal infrastructure partner before that direct loan can be disbursed or loan guarantee can be issued.

(f) *Direct loan* means a disbursement of funds by the Government to a non-federal borrower under a contract that requires the repayment of such funds.

(g) *FRA* means the Federal Railroad Administration.

(h) *Financial assistance* means a direct loan, or a guarantee of a new loan issued under this part.

(i) *Holder* means the current owner of an obligation or the entity retained by the owner to service and collect an obligation which is guaranteed under the provisions of this part.

(j) *Including* means including but not limited to.

(k) *Infrastructure partner* means any non-Federal source of the Credit Risk Premium which must be paid to the Administrator in lieu of, or in combination with, an appropriation in connection with financial assistance provided under this part.

(l) *Intermodal* means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(m) *Lender* means the non-Federal entity making a loan to an Applicant for which a loan guarantee under this part is sought.

(n) *Loan guarantee* means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal Lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(o) *Obligation* means a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation.

(p) *Obligor* means the debtor under an obligation, including the original obligor and any successor or assignee of such obligor.

(q) *Project* means the purpose for which financial assistance is requested.

(r) *Railroad* means a rail carrier subject to part A of subtitle IV of title 49, United States Code.

(s) *Subsidy cost of a direct loan* means the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(1) Loan disbursements;

(2) Repayments of principal; and

(3) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries; including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(t) *Subsidy cost of a loan guarantee* means the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(1) Payments by the Government to cover defaults, delinquencies, interest subsidies, or other payments; and

(2) The payments to the Government including origination and other fees, penalties and recoveries.

§ 260.5 Eligible purposes.

(a) Financial assistance under this part is available solely to:

(1) Acquire, improve, or rehabilitate intermodal or rail freight or passenger equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(2) Refinance outstanding debt incurred for purposes described in paragraph (a)(1) of this section; or

(3) Develop or establish new intermodal or railroad facilities.

(b) Financial assistance under this part cannot be used for railroad operating expenses.

§ 260.7 Priority consideration.

When evaluating applications, the Administrator will give priority consideration (but not necessarily in the following order) to projects that:

(a) Enhance public safety;

(b) Enhance the environment;

(c) Promote economic development;

(d) Enable United States companies to be more competitive in international markets;

(e) Are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located; or

(f) Preserve or enhance rail or intermodal service to small communities or rural areas.

§ 260.9 Loan terms.

The maximum repayment period for direct loans and guaranteed loans under this part is 25 years from the date of execution. The interest rate on direct loans will be equal to the rate on Treasury securities of a similar term. In general, the financial assistance provided will be required to be repaid prior to the end of the useful life of the project it is used to fund.

§ 260.11 Investigation charge.

(a) Applicants for financial assistance under this part may be required to pay an investigation charge of up to one-half of one percent of the principal amount of the direct loan or portion of the loan to be guaranteed.

(b) When an investigation charge is assessed, one-half of the investigation charge shall be paid by Applicant at the time a formal application is submitted to FRA.

(c) Within 60 days after the date of filing of the application, Applicant shall pay to the Administrator the balance of the investigation charge.

§ 260.13 Credit reform.

The Federal Credit Reform Act of 1990, 2 U.S.C. 661, requires Federal agencies to set aside the subsidy cost of new credit assistance provided in the form of direct loans or loan guarantees. The subsidy cost will be the estimated

long term cost to the Government of the loan or loan guarantee. The subsidy cost associated with each direct loan or loan guarantee, which the Administrator must set aside, may be funded by Federal appropriations, direct payment of a Credit Risk Premium by the Applicant or a non-Federal infrastructure partner on behalf of the Applicant, or any combination thereof.

§ 260.15 Credit risk premium.

(a) Where available Federal appropriations are inadequate to cover the subsidy cost, a non-Federal infrastructure partner may pay to the Administrator a Credit Risk Premium adequate to cover that portion of the subsidy cost not covered by Federal appropriations. Where there is no Federal appropriation, the Credit Risk Premium must cover the entire subsidy cost.

(b) The amount of the Credit Risk Premium required for each direct loan or loan guarantee, if any, shall be established by the Administrator. The Credit Risk Premium shall be determined based on the credit risk and anticipated recovery in the event of default, including the recovery of collateral.

(c) The Credit Risk Premium must be paid before the disbursement of a direct or guaranteed loan. Where the borrower draws down the direct or guaranteed loan in several increments, the borrower may pay a portion of the total Credit Risk Premium for each increment equal to the proportion of that increment to the total amount of the direct or guaranteed loan.

(d) Each direct loan and loan guarantee made by the Administrator will be included in one cohort of direct loans or one cohort of loan guarantees, respectively, made during that same fiscal year, or longer period, as may be determined by the Administrator. When all obligations in a cohort have been satisfied or liquidated, the amount of Credit Risk Premiums, paid by applicants or infrastructure partners, remaining in the cohort, after deductions made to mitigate losses from any loan or loan guarantee in the cohort, together with interest accrued thereon, will be repaid on a pro rata basis to each original payor of a Credit Risk Premium for any obligation which was fully satisfied. If the Administrator's estimate of the default risk cost of each loan is accurate, the aggregate of Credit Risk Premiums associated with each cohort of loans will fully offset all losses in the cohort and none will remain to be returned to the payees.

Subpart B—FRA Policies And Procedures For Evaluating Applications For Financial Assistance

§ 260.17 Credit risk premium analysis.

(a) When Federal appropriations are not available to cover the total subsidy cost, the Administrator will determine the Credit Risk Premium necessary for each direct loan or loan guarantee by estimating the credit risk and the potential recovery in the event of a default of each project evaluating the factors described in paragraphs (b) and (c) of this section.

(b) Establishing the credit risk.

(1) Where an Applicant has received a recent credit rating from one or more nationally recognized rating agencies, that rating will be used to estimate the credit risk.

(2) Where an Applicant has not received a credit rating from a credit rating agency, the Administrator will determine the credit risk based on an evaluation of the following factors:

(i) Business risk, based on Applicant's:

(A) Industry outlook;

(B) Market position;

(C) Management and financial policies;

(D) Capital expenditures; and

(E) Operating efficiency.

(ii) Financial risk, based on Applicant?s past and projected:

(A) Profitability;

(B) Liquidity;

(C) Financial strength;

(D) Size; and

(E) Level of capital expenditures; and

(iii) Project risk, based on the proposed project's:

(A) Potential for improving revenues, profitability and cash flow from operations; and

(B) Reliance on third parties for success.

(c) The potential recovery in the event of a default will be based on:

(1) The nature of the Applicant's assets; and

(2) Liquidation value of the collateral offered, including the terms and conditions of the lien securing the collateral.

§ 260.19 Preapplication meeting.

Potential Applicants may request a meeting with the FRA Associate Administrator for Railroad Development to discuss the nature of the project being considered. Applicants must be prepared to provide at least the following information:

(a) Applicant's name, address, and contact person;

(b) Name of the proposed infrastructure partner(s), if any, including the identification of potential amounts of funding from each;

(c) Amount of the direct loan or loan guarantee request, and a description of the technical aspects of the project including a map of the existing railroad lines with the location of the project indicated;

(d) Brief description and estimate of the economic impact, including future demand for service, improvements that can be achieved, the project's relation to the priorities listed in § 260.7, along with any feasibility, market or other studies that may have been done as attachments;

(e) Amount of Applicant's equity and a description of collateral offered, with estimated values, including the basis of such, to be offered as security for the loan;

(f) If applicable, the names and addresses of the Applicant's parent, affiliates, and subsidiary corporations, if any, and a description of the ownership relationship and the level of guarantee, if any, to be offered;

(g) For existing companies, a current balance sheet and an income statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the four most recent years; and

(h) Information relevant to the potential environmental impacts of the project in the context of applicable Federal law.

Subpart C—Applications for Financial Assistance

§ 260.21 Eligibility.

The Administrator may make a direct loan to an Applicant, or guarantee the payment of the principal balance and any interest of an obligation of an Applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such direct loan or obligation shall be, or have been, used by the Applicant for the eligible purposes listed in § 260.5(a)(1), (2), and (3).

§ 260.23 Form and content of application generally.

Each application shall include, in the order indicated and identified by applicable paragraph numbers and letters corresponding to those used in this section, the following information:

(a) Full and correct name and principal business address of the Applicant;

(b) Date of Applicant's incorporation, or organization if not a corporation, and name of the government, State or territory under the laws of which it was incorporated or organized. If Applicant

is a partnership, association, or other form of organization other than a corporation, a full description of the organization should be furnished;

(c) Name, title, and address of the person to whom correspondence regarding the application should be addressed.

(d) A statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise; if so, description of the relative participation of Applicant and such other railroad or participant, including financial statements (if applicable) and financing arrangements of each participant, portion of the work to be performed by each participant, and anticipated level of usage of the equipment or facility of each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(e) A detailed description of the amount and timing of the financial assistance that is being requested and its purpose or purposes, including:

(1) Detailed description of the project and its purpose or purposes;

(2) A description of all facilities or equipment and the physical condition of such facilities or equipment included in or directly affected by the proposed project;

(3) Each part or sub-part into which the project may reasonably be divided and the priority and schedule of expenditure for each part or sub-part; and

(4) Proposed dates of commencement and completion of the project and estimated timing of the expenditure of the proceeds of the obligation;

(5) A map of Applicant's existing railroad with location of project indicated, if appropriate.

(f) A listing and description of the collateral to be offered the Administrator in connection with any financial assistance provided; Applicant's opinion of the value of this security and the basis for such opinion; in the case of leased equipment to be rehabilitated or improved with the proceeds of the obligation proposed to be guaranteed, Applicant shall state, in addition to the above, whether the lease provides for, or the lessor will permit, encumbrance of the leasehold or subordination of the lessor's interest in the equipment to the Administrator;

(g) A statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by Applicant or any affiliated corporate entity of the Applicant or the Applicant's parent as of the date of the application, including:

(1) Status of any claims under litigation; and

(2) Any other debits or credits existing between the Applicant and the United States, showing the department or agency involved in such loans, claims and other debts;

(h) To the extent such information is available, an analysis that includes:

(1) a statement, together with supporting evidence including copies of all market analyses and studies that have been performed to determine present and future demand for rail services or facilities, that the financing is justified by present and future probable demand for rail services or facilities, will meet existing needs for such services or facilities, and will provide shippers or passengers with improved service;

(2) Description of the impact of the project upon the projected freight or passenger traffic to be originated, terminated, or carried by the Applicant for at least the five years immediately following completion of the project;

(3) Explanation of the manner in which the project will increase the economical and efficient utilization of equipment and facilities; and

(4) Description of cost savings or any other benefit which would accrue to the Applicant from the project;

(i) A statement as to how the project will contribute to, or enhance, the safe operation of the railroad, considering such factors as the occupational safety and health of the employees and the improvement of the physical and other conditions that have caused or may cause serious injury or loss of life to the public or significant property damage;

(j) A statement of the Applicant's maintenance program for its entire rail system and planned maintenance program for the equipment or facilities financed by the proceeds of the financial assistance;

(k) A certified statement in the form contained in § 260.31(d) that Applicant will pay to the Administrator, in accordance with § 260.11, the investigation charge with respect to the application.

(l) Information relevant to the potential environmental impacts of the project in the context of applicable Federal laws;

(m) Any additional information that the Applicant deems appropriate to convey a full and complete understanding of the project, the project's relations to the priorities listed in § 260.7, and its impact, or to assist the Administrator in making the statutorily prescribed findings; and

(n) Any other information which the Administrator may deem necessary concerning an application filed under this part.

(o) Railroad applicants must also submit a copy of application for financing for the project in the private sector, including terms requested, from at least one commercial lender, and its response refusing to provide such financing.

§ 260.25 Additional information for Applicants not having a credit rating.

Each application submitted by Applicants not having a recent credit rating from one or more nationally recognized rating agencies shall include, in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) A narrative statement detailing management's business plan to enhance Applicant's ability to provide rail services including a discussion of the following:

(1) Applicant's current and prospective traffic base, including by commodity and geographic region, major markets served, major interchange points, and market development plans;

(2) Applicant's current operating patterns, and plans, if any, to enhance its ability to serve its current and prospective traffic base;

(3) System-wide plans to maintain equipment and rights-of-way at current or improved levels; and

(4) Specific plans for rationalization of marginal or uneconomic services;

(b) Detailed financial information, including:

(1) Financial statements prepared by a Certified Public Accountant (audited, if available), for the four calendar years immediately preceding the date of filing of the application, including:

(i) A copy of Applicant's most recent year-end general balance sheet and a copy of Applicant's most recent unaudited general balance sheet; and

(ii) Applicant's most recent annual income statement and a spread sheet showing unaudited monthly and year-to-date income statement data up to the date the application is filed;

(2) Projected financial statements, including spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance requested in the application:

(i) Forecasted annual income statement;

(ii) Forecasted year-end balance sheets. These spread sheets shall be

accompanied by a statement setting forth the bases for such forecasts; and

(iii) A spread sheet showing changes in financial position for the year in which the application is filed, including the period ending on the date of the application based upon actual data and the period from the date of the application to the end of the year, based upon estimated and forecasted data;

(c) Capital spending plans for the next five years;

(d) Cash flow projections;

(e) Contingency plans for termination of the project before completion, if necessary; and

(f) A narrative description of Applicant's management team, including:

(1) Rail experience of top management;

(2) Management's plans for achieving growth and its long-term capital spending plan; and

(3) A narrative description of Applicant's workforce and the historical rate of employee turnover.

§ 260.27 Additional information for loan guarantees.

Applications for a loan guarantee shall also include in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) With respect to each existing obligation to be refinanced or proposed obligation:

(1) A certified copy of proposed or executed obligation agreements;

(2) A detailed description of the obligation, and a description of the series or issue of which the obligation is, or will be, a part, including:

(i) Effective date, or anticipated effective date;

(ii) Where a guarantee is sought for an outstanding obligation being refinanced, actual effective rate of interest; or where the obligation is new, the terms of the proposed obligation including the proposed effective rate of interest; and

(iii) All related documents, whether executed or proposed;

(3) For an existing obligation, the Applicant's payment history on that obligation; and

(b) With respect to each existing Lender, Holder, or prospective Lender, a statement as to:

(1) Full and correct name and principal business address;

(2) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to do business on the Lender, Holder, or prospective Lender;

(3) Brief statement of the circumstances and negotiations leading to the agreement by the Lender, Holder, or prospective Lender to make the loan;

(4) Brief statement of the nature and extent of any affiliation or business relationship between the Lender, Holder, or prospective Lender and the Applicant or any of Applicant's directors, partners, or principal executive officers; and.

(5) Full and complete statement of all sums to be provided by the Lender or Holder, or to be provided by the prospective Lender in connection with the proposed obligation including:

(i) Name and address of each person to whom the payment has been made or will be made and nature of any affiliation, association, or prior business relationship between any person named in this paragraph and the Lender, Holder or prospective Lender or any of its directors, partners, or officers; and

(ii) Amount of the cash payment, or the nature and value of other consideration.

§ 260.29 Third party consultants.

Applicants may utilize independent third-party consultants to prepare a financial evaluation of the proposed project and the applicant, if approved by FRA. Providing such an evaluation would greatly assist FRA in the evaluation of the application and would significantly reduce the time necessary for FRA to process the application. We encourage the use of third party consultants.

§ 260.31 Execution and filing of the application.

(a) The original application shall bear the date of execution, be signed in ink by or on behalf of the Applicant, and shall bear the corporate seal in the case of an Applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the Applicant shall also sign a certificate in form as follows:

(Name of official) certifies that he or she is the (Title of official) of the (Name of Applicant); that he or she is authorized on the part of the Applicant to sign and file with the Administrator this application and exhibits attached thereto; that the consent of all parties whose consent is required, by law or by binding commitment of the Applicant, in order to make this application has been given; that he or she has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid (Name of Applicant); that he or she has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his or her knowledge, information, and belief; and that Applicant will pay the balance of the investigation charge in accordance with § 260.11.

(Signature of official)
(Date)

(b) There shall be made a part of the original application the following certificate by the Chief Financial Officer or equivalent officer of the Applicant:

(Name of officer) certifies that he or she is (Title of officer) of (Name of Applicant); that he or she has supervision over the books of accounts and other financial records of the affected Applicant and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting practices; that such accounts are adequate to assure that proceeds from the financing being requested will be used solely and specifically for the purposes authorized; that he or she has examined the financial statements and supporting schedules included in this application and to the best of his or her knowledge and belief those statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, those financial statements and supporting schedules represent a true and complete statement of the financial position of the Applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the Applicant.

(Signature of official)
(Date)

(c) The Applicant shall pay the investigation charge in accordance with § 260.11.

(d) The application shall be accompanied by a transmittal letter in form as follows:

Federal Railroad Administrator, c/o Associate Administrator for Railroad Development, Federal Railroad Administration, Washington, D.C. 20590

Re: Application for financial assistance under the Railroad Rehabilitation and Improvement Financing Program.

Dear Sir or Madam: Being duly authorized by (jointly and severally/if more than one) (the ''Applicant'') to convey the understandings hereinafter set forth, I respectfully submit this application and remit its investigation fee in the amount equal to one-half the total investigation fee established by the Administrator. By this filing, Applicant requests the Administrator to investigate the application and make the necessary findings upon which Applicant's eligibility for a direct loan or loan guarantee may be determined. Applicant understands

that neither the acceptance of this filing, the deposit of the investigation charge, nor the commencement of an investigation acknowledges the sufficiency of the application's form, content or merit. Furthermore, Applicant understands that the Administrator will incur numerous expenses by this filing with respect to the investigation of the application, the appraisal of security being offered, and the making of the necessary determinations and findings, and promises to pay, within 60 days, the remainder of the investigation fee required by the Administrator. Applicant understands that the Administrator will establish the amount of Credit Risk Premium due from Applicant, if any, as provided in § 260.15. Applicant agrees to pay such Credit Risk Premium prior to the disbursement of direct or guaranteed loan, as appropriate. Such Credit Risk Premium may be refunded as provided in § 260.15.

Respectfully submitted.

Applicant(s)
Seal(s) by Its(Their).

(e) The original application and supporting papers, and two copies thereof for the use of the Administrator, shall be filed with the Associate Administrator for Railroad Development of the Federal Railroad Administration, 1120 Vermont Ave., NW., MailStop 20, Washington, DC 20590. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed.

§ 260.33 Information requests.

If an Applicant desires that any information submitted in its application or any supplement thereto not be released by the Administrator upon request from a member of the public, the Applicant must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential to the extent permitted by law.

§ 260.35 Environmental assessment.

(a) The provision of financial assistance by the Administrator under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including the National Environmental Policy Act (''NEPA'') (42 U.S.C. 4332 *et seq.*), Section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)), the National Historic Preservation Act (16 U.S.C. 470(f)), the Coastal Zone Management Act (16 U.S.C. 1451), and the Endangered Species Act (16 U.S.C. 1531). Appropriate environmental/historic preservation documentation must be completed and approved by the Administrator prior to a decision by the Administrator on the applicant's financial assistance request. FRA's ''Procedures for Considering Environmental Impacts'' (''FRA's Environmental Procedures'') (65 FR 28545 (May 26, 1999)) or any replacement environmental review procedures that the FRA may later issue and the NEPA regulation of the Council on Environmental Quality (''CEQ Regulation'') (40 CFR Part 1500) will govern the FRA's compliance with applicable environmental/historic preservation review requirements.

(b) The Administrator, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administrator in accordance with the CEQ Regulation and Environmental Procedures.

(c) Depending on the type, size and potential environmental impact of the project for which the applicant is seeking financial assistance, FRA will need to determine whether the project is categorically excluded from detailed environmental review under FRA's Environmental Procedures and, if not, to prepare or have prepared an Environmental Assessment leading to an Environmental Impact Statement (EIS) or a Finding of No Significant Impact. At the discretion of the Administrator, Applicants may be required to prepare and submit an environmental assessment of the proposed project or to submit adequate documentation to support a finding that the project is categorically excluded from detailed environmental review. If the applicant is a public agency that has statewide jurisdiction or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may be requested to prepare the EIS and other environmental documents under the Administrator's guidance.

(d) Applicants are strongly urged to consult with the Associate Administrator for Railroad Development at the earliest possible stage in project development in order to assure that the environmental/historic preservation review process can be completed in a timely manner.

(e) Applicants may not initiate any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives in advance of the completion of the environmental review process. This does not preclude development by applicants of plans or designs or performance of other work necessary to support the application for financial assistance.

Subpart D—Standards for Maintenance of Facilities Involved in the Project

§ 260.37 Applicability.

This subpart prescribes standards governing the maintenance of facilities that are being, or have been, acquired, rehabilitated, improved, or constructed with the proceeds of a direct loan or a guaranteed loan issued under this part for the period during which any portion of the principal or interest of such obligation remains unpaid.

§ 260.39 Maintenance standards.

(a) When the proceeds of a direct loan or an obligation guaranteed by the Administrator under this part are, or were, used to acquire, rehabilitate, improve or construct track, roadbed, and related structures, Borrower shall, as long as any portion of the principal or interest of such obligation remains unpaid, maintain such facilities in at least the highest track class, as defined by FRA Track Safety Standards in part 213 of this chapter, specified in the Application at which the rehabilitated, improved, acquired, or constructed track is to be operated upon completion of the project.

(b) When the proceeds of a direct loan or an obligation guaranteed by the Administrator under this part are, or were, used for equipment or facilities, the Borrower shall, during the period in which any portion of the principal or interest in such obligation remains unpaid, maintain such equipment or facilities in a manner consistent with sound engineering and maintenance practices and in a condition that will permit the level of use that existed upon completion of the acquisition, rehabilitation, improvement or construction of such equipment or facilities.

§ 260.41 Inspection and reporting.

(a) Equipment or facilities subject to the provisions of this subpart may be inspected at such times as the Administrator deems necessary to assure compliance with the standards set forth in § 260.39. Each Borrower shall permit representatives of the FRA to enter upon its property to inspect and examine such facilities at reasonable times and in a reasonable manner. Such representatives shall be permitted to use such testing devices as the Administrator deems necessary to insure that the maintenance standards imposed by this subpart are being followed.

(b) Each Borrower shall submit annually to the Administrator financial

records and other documents detailing the maintenance and inspections performed which demonstrate that the Borrower has complied with the standards in § 260.39.

§ 260.43 Impact on other laws.

Standards issued under this subpart shall not be construed to relieve the Borrower of any obligation to comply with any other Federal, State, or local law or regulation.

Subpart E—Procedures To Be Followed in the Event of Default

§ 260.45 Events of default for guaranteed loans.

(a) If the Borrower is more than 30 days past due on a payment or is in violation of any covenant or condition of the loan documents and such violation constitutes a default under the provisions of the loan documents, Lender must notify the Administrator in writing and must continue to submit this information to the Administrator each month until such time as the loan is no longer in default; and the Administrator will pay the Lender of the obligation, or the Lenders's agent, an amount equal to the past due interest on the guaranteed portion of the defaulted loan. This payment will in no way reduce the Borrower's obligation to the Lender to make all payments of principal and interest in accordance with the note. If the loan is brought current, the Lender will repay to the Agency any interest payments made by the Agency, plus accrued interest at the note rate.

(b) If the default has continued for more than 90 days, the Administrator will pay to the Lender, or the Lender's agent, 90 percent of the unpaid guaranteed principal. If, subsequent to this payment being made, the default is cured and liquidation is no longer appropriate, the Lender will repay such funds to the Administrator, plus interest at the note rate.

(c) After the default has continued for more than 90 days, the Lender shall expeditiously submit to the Administrator, in writing, its proposed detailed plan to resolve the default by liquidating the collateral or by any other means. If the resolution will require the liquidation of the collateral, then the Lender's plan shall include:

(1) Proof adequate to establish that the Lender is legally in possession of the obligation, or is the agent for a Holder who is legally in possession of the obligation, and a statement of the current loan balance and accrued interest to date and the method of computing the interest;

(2) A full and complete list of all collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from any guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the Borrower's latest available financial statements;

(6) Copies of any guarantor's latest available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the FRA on the progress of liquidation;

(9) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as appropriate;

(12) The Lender will obtain an independent appraisal on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan that maximizes recovery, the appraisal shall consider the presence of hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral; and

(13) The anticipated expenses associated with the liquidation will be considered a cost of liquidation.

(d) The Administrator will inform the Lender in writing whether the Administrator concurs in the Lender's liquidation plan. Should the Administrator and the Lender not agree on the liquidation plan, negotiations will take place between the Administrator and the Lender to resolve the disagreement. When the liquidation plan is approved by the Administrator, the Lender will proceed expeditiously with liquidation. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Administrator prior to implementation.

(e) Lender will account for funds during the period of liquidation and will provide the Administrator with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(f) Within 30 days after final liquidation of all collateral, the Lender will prepare and submit to the Administrator a final report in which the Lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Administrator may audit all applicable documentation to confirm the final loss. The Lender will make its records available and otherwise assist the Administrator in making any investigation.

(g) The Administrator shall be subrogated to all the rights of the Lender, or if Lender is agent for a Holder then to all of the rights of the Holder, with respect to the Borrower to the extent of the Administrator's payment to the Lender under this section.

(h) When the Administrator finds the final report to be proper in all respects:

(1) All amounts recovered in liquidation shall be paid to the Administrator; and

(2) The remaining obligation of the Administrator to the Lender under the guarantee, if any, will be paid directly to Lender by the Administrator.

(i) The Administrator shall not be required to make any payment under paragraphs (a) and (b) of this section if the Administrator finds, before the expiration of the periods described in such subsections, that the default has been remedied.

(j) The Administrator shall have the right to charge Borrower interest, penalties and administrative costs, including all of the United States' legally assessed or reasonably incurred expenses of its counsel and court costs in connection with any proceeding brought or threatened to enforce payment or performance under applicable loan documents, in accordance with OMB Circular A–129 (www.whitehouse.gov/omb.), as it may be revised from time to time.

§ 260.47 Events of default for direct loans.

(a) Upon the Borrower's failure to make a scheduled payment, or upon the Borrower's violation of any covenant or condition of the loan documents which constitutes a default under the provisions of the loan documents, the Administrator, at the Administrator's discretion may:

(1) Exercise any and all remedies available under the provisions of the loan agreement and other loan

documents, including any guarantees, or inherent in law or equity;

(2) Terminate further borrowing of funds;

(3) Take possession of assets pledged as collateral; and

(4) Liquidate pledged collateral.

(b) The Administrator shall have the right to charge Borrower interest, penalties and administrative costs, including all of the United States' legally assessed or reasonably incurred expenses of its counsel and court costs in connection with any proceeding brought or threatened to enforce payment or performance under applicable loan documents, in accordance with OMB Circular A–129, as it may be revised from time to time.

§ 260.49 Avoiding defaults.

Borrowers are encouraged to contact the Administrator prior to the occurrence of an event of default to explore possible avenues for avoiding such an occurrence.

Subpart F—Loan Guarantees—Lenders

§ 260.51 Conditions of guarantee.

(a) The percentage of the obligation for which Applicant seeks a guarantee is a matter of negotiation between the Lender and the Applicant, subject to the Administrator's approval. The maximum percentage of the total obligation that the Administrator will guarantee is 80 percent. The amount of guarantee allowed will depend on the total credit quality of the transaction and the level of risk believed to be assumed by the Administrator.

(b) A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a Lender or Holder has actual knowledge at the time it becomes such Lender or Holder or which a Lender or Holder participates in or condones. In addition, the guarantee will be unenforceable by the Lender or the Holder to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Administrator acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FRA in its guarantee.

(c) The Administrator may guarantee an Applicant's obligation to any Lender provided such Lender can establish to the satisfaction of the Administrator that it has the legal authority and sufficient expertise and financial strength to operate a successful lending program. Loan guarantees will only be approved for Lenders with adequate experience and expertise to make, secure, service, and collect the loans.

(d) The Lender may sell all of the guaranteed portion of the loan on the secondary market, provided the loan is not in default, or retain the entire loan.

(e) When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the Lender under the loan guarantee to the extent of the portion purchased. The Lender will remain bound to all obligations under the loan guarantee and the provisions of this part. In the event of material fraud, negligence or misrepresentation by the Lender or the Lender's participation in or condoning of such material fraud, negligence or misrepresentation, the Lender will be liable for payments made by the Agency to any Holder.

§ 260.53 Lenders' functions and responsibilities.

Lenders have the primary responsibility for the successful delivery of the program consistent with the policies and procedures outlined in this part. All Lenders obtaining or requesting a loan guarantee from the Administrator are responsible for:

(a) *Loan processing.* Lender shall be responsible for all aspects of loan processing, including:

(1) Processing applications for the loan to be guaranteed;

(2) Developing and maintaining adequately documented loan files;

(3) Recommending only loan proposals that are eligible and financially feasible;

(4) Obtaining valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervising construction, where appropriate;

(6) Distributing loan funds;

(7) Servicing guaranteed loans in a prudent manner, including liquidation if necessary; and

(8) Obtaining the Administrator's approval or concurrence as required in the loan guarantee documentation;

(b) *Credit evaluation.* Lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The Lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures;

(c) *Environmental responsibilities.* Lender has a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lender must alert the Administrator to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lender must assist borrowers as necessary to comply with the environmental requirements outlined in this part. Additionally, Lender will assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems;

(d) *Loan closing.* The Lender will conduct or arrange for loan closings; and

(e) *Fees and Charges.* The Lender may establish charges and fees for the loan provided they are similar to those normally charged other Applicants for the same type of loan in the ordinary course of business.

§ 260.55 Lender's loan servicing.

(a) The lender is responsible for servicing the entire loan and for taking all servicing actions that are prudent. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the loan documents, obtaining and analyzing financial statements, verification of tax payments, and insurance premiums, and maintaining liens on collateral.

(b) The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually.

(c) At the Administrator's request, the Lender will periodically meet with the Administrator to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan documents are being enforced.

(d) The Lender must obtain and forward to the Administrator the Borrower's annual financial statements within 120 days after the end of the Borrower's fiscal year and the due date of other reports as required by the loan documents. The Lender must analyze the financial statements and provide the Agency with a written summary of the Lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the Borrower.

(e) Neither the Lender nor the Holder shall alter, nor approve any

amendments of, any loan instrument without the prior written approval of the Administrator.

Issued in Washington, DC on June 27.

Jolene M. Molitoris,

Administrator.

[FR Doc. 00–16778 Filed 7–5–00; 8:45 am]

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