

Pt. 22

and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Federal Transit Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator—(1) Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking

49 CFR Subtitle A (10–1–23 Edition)

for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21–1, 38 FR 5875, Mar. 5, 1973; Amdt. 21–3, 40 FR 14318, Mar. 31, 1975; 79 FR 21405, Apr. 16, 2014]

PART 22—SHORT-TERM LENDING PROGRAM (STLP)

Subpart A—General

Sec.

22.1 Purpose.

22.3 Definitions.

Subpart B—Policies applying to STLP loans

22.11 Eligibility criteria.

22.13 Loan terms and conditions.

22.15 Delinquency on Federal, State, and Municipal debt.

22.17 Compliance with child support obligations.

22.19 Credit criteria.

Subpart C—Participating Lenders

22.21 Participation criteria.

22.23 Agreements.

22.25 Lender deliverables and delivery schedule.

22.27 Eligible reimbursements to participating lenders.

22.29 DOT access to participating lender files.

22.31 Suspension or revocation of eligibility to participate.

22.33 Termination of participation in the STLP.

Subpart D—Loan Application Process

22.41 Application procedures.

22.43 Approvals and denials.

22.45 Allowable fees to borrowers.

Subpart E—Loan Administration

- 22.51 Loan closings.
- 22.53 Loan monitoring & Servicing requirements.
- 22.57 Loan reporting requirements.
- 22.59 Loan modifications.
- 22.61 Loan guarantee extensions.
- 22.63 Loan close outs.
- 22.65 Subordination.
- 22.67 Delinquent loans and loan defaults.
- 22.69 Claims process.

AUTHORITY: 49 U.S.C. 332.

SOURCE: 75 FR 19290, Apr. 14, 2010, unless otherwise noted.

Subpart A—General**§ 22.1 Purpose.**

The purpose of the DOT OSDBU STLP is to provide financial assistance in the form of short-term loans from Participating Lenders that are guaranteed by DOT OSDBU, to DBEs and SDBs for the execution of DOT funded and supported transportation-related contracts.

§ 22.3 Definitions.

As used in this part:

Accounts receivable means monies that are due to the borrower for work performed or services rendered under a contract, subcontract, or purchase order.

Activation date means the date that the STLP loan is established on the Participating Lender's books and recorded as an open loan. It is also the date that the borrower can begin to draw funds from the line of credit. Activation date is also the date in which the DOT OSDBU guarantee becomes effective.

Assigned contract means the transportation-related contract(s), subcontract(s), and/or purchase order(s) that has been pledged as collateral to a STLP loan and perfected through an assignment form executed by all appropriate parties.

Borrower is the obligor of a DOT OSDBU guaranteed loan.

Cooperative agreement is the written agreement between DOT OSDBU and a Participating Lender that outlines the terms and conditions under which the lender may submit eligible loan requests to DOT OSDBU for consideration of its loan guarantee. The cooper-

ative agreement further outlines the responsibilities and requirements of the lender in order to participate in the STLP.

Director means Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation.

Disadvantaged business enterprise or DBE means a business that is certified as such by a recipient of DOT financial assistance as provided in 49 CFR part 23 or 49 CFR part 26.

Guarantee agreement means DOT OSDBU's written agreement with a Participating Lender that provides the terms and conditions under which DOT OSDBU will guarantee a STLP loan. It is not a contract to make a direct loan to the borrower.

Loan guarantee means the agreement of DOT OSDBU to issue a guarantee of payment of a specified portion of an approved STLP loan to the Participating Lender, under DOT OSDBU stated terms and conditions, in the event that the borrower defaults on the loan.

Loan purpose means the approved uses for STLP loan proceeds. That is, only for short-term working capital needs related to the direct costs of an eligible transportation-related contract.

Other eligible certifications mean the following certifications obtained by a borrower through the U.S. Small Business Administration (SBA): Small Disadvantaged Business (SDB); Section 8(a) Program participant; HUBZONE Empowerment Contracting Program; and Service-Disabled Veteran Program (SDV).

Participating Lender (PL) is a bank or other lending institution that has agreed to the terms of a cooperative agreement and has been formally accepted into the STLP by DOT OSDBU.

Small and disadvantaged business (SDB) includes 8(a); small disadvantaged business; women-owned business, HubZone, and service-disabled veteran-owned business.

Socially and economically disadvantaged individual has the same meaning as stated in 49 CFR 26.5.

Technical assistance means service provided by the Participating Lender to the DBE or SDB that will enable the DBE or SDB to become more capable of

§ 22.11

managing its transportation-related contracts. Technical assistance can be provided by collaborating with agencies that offer small business management counseling such as the SBA, the U. S. Department of Commerce's Minority Business Development Centers (MBDCs), the Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs).

Transportation-related contract means a contract, subcontract, or purchase order, at any tier, for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation that receive DOT funding.

Work-out means a plan that offers options to avoid loan default or collateral foreclosure and/or liquidation that is intended to resolve delinquent loans or loans in imminent default, which may include, but not limited to: deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity and the government guarantee to the Participating Lender, or postponing collection action.

Subpart B—Policies Applying to STLP Loans

§ 22.11 Eligibility criteria.

(a) *Eligible Borrower.* To be eligible to apply for a STLP loan guarantee, a borrower must meet the following requirements:

- (1) Be a for-profit entity;
- (2) Have an eligible transportation-related contract;
- (3) Demonstrate an eligible use for the desired credit;
- (4) Be an established business with experience in the transportation industry and trade for which the STLP loan is sought;
- (5) Be certified as a DBE or have another eligible certification issued by the SBA; and
- (6) Be current on all federal, state, and local tax liabilities.

(b) *Eligible Transportation-Related Contract.* Any fully-executed transportation-related contract, subcontract, or purchase order held directly with DOT or with grantees and recipients

49 CFR Subtitle A (10–1–23 Edition)

receiving federal funding from DOT for the maintenance, rehabilitation, restructuring, improvement or revitalization of any of the nation's modes of transportation shall be considered an eligible contract.

(c) *Eligibility Period.* A borrower is eligible for participation in the STLP for a period up to a total of five (5) years. The STLP renewal is not automatic. The borrower has to demonstrate its continued eligibility and creditworthiness for STLP and must submit a complete application package.

(1) The continued eligibility of any borrower who would exceed the period limit in paragraph (c) of this section will be determined on a case-by-case basis by the OSDBU Director and is subject to the following provisions:

(i) The STLP loan guarantee may be reduced; and

(ii) The STLP loan interest rate may be increased.

(2) Should any borrower currently in the STLP become ineligible per paragraph (a) of this section during the term of a STLP loan, the failure to comply with a specific requirement must be brought to the immediate attention of all remaining parties.

(3) Borrower ineligibility may result in a termination of the current guarantee.

§ 22.13 Loan terms and conditions.

(a) *Amount.* The maximum face amount for an individual STLP loan may not exceed seven hundred and fifty thousand (\$750,000) dollars, unless the requested increased amount is authorized by the OSDBU Director.

(b) *Interest Rates.* All STLP loans shall have a variable interest rate.

(1) *Initial Interest Rate.* The base rate guideline for STLP loans is the prime rate in effect on the first business day of the month in which the STLP loan guarantee is approved by DOT OSDBU. The prime rate is the rate printed in a national financial newspaper published each business day. The Participating Lender may increase the base rate by the maximum allowable percentage points currently allowed by STLP policies and procedures and as communicated in subsequent DOT OSDBU notices.

(2) *Frequency of Change.* The first change may occur on the first calendar day of the month following the initial loan disbursement, using the above base rate in effect on the first business day of the month. Subsequent interest rate changes may occur no more than monthly.

(c) *Loan Structure and Term.* A STLP loan shall be set up as a revolving line of credit. The line permits the borrower to request principal advances, pay them back, and then re-borrow, not to exceed the face value of the line of credit. Participating Lenders are required to provide DOT OSDBU written notification of the activation date of each line of credit under the STLP. The term of the Federal guarantee of the line of credit commences on the activation date.

(d) *Repayment.* Interest payments must be made monthly. The principal of the loan is repaid as payment from approved accounts receivable are received by the Participating Lender through a joint payee check system. The assigned contract supporting the STLP loan is the primary source of repayment.

(e) *Use of Loan Proceeds.* STLP loans must be used to finance short-term working capital needs, specifically direct costs generated by the assigned contract. Proceeds may not be used for the following purposes:

- (1) For long term working capital;
- (2) To repay delinquent State or Federal withholding taxes, local taxes, sales taxes or similar funds that should be held in trust or escrow; and/or
- (3) To provide funds for the distribution or payment to the owners, partners or shareholders of the business; and/or
- (4) To retire short or long-term debt.

(f) Non-compliance by the DBE in using the STLP loan for purposes not consistent with these regulations will result in a non-renewal of the STLP loan and in forfeiture of the STLP loan guarantee to the PL on any ineligible principal advances requested by the borrower and made by the PL.

(g) *Disbursements.* STLP funds may only be released to an eligible borrower upon the submission and verification of a valid written accounts receivable invoice, showing labor and/or materials

amounts due for completed work on the contract. The Participating Lender must verify the accuracy of the invoice with the paying transportation government agency, if the borrower is a prime contractor, and/or with the prime contractor, if the borrower is a subcontractor. This verification must be obtained by the Participating Lender prior to advancing funds. No more than 85% of an approved accounts receivable invoice shall be advanced to the borrower by the Participating Lender.

(1) Processing time. Disbursement of STLP funds to the borrower should be accomplished within three (3) business days of an accounts receivable invoice approval by the paying agency and/or prime contractor.

(2) Electronic funds transfer. If the disbursement of STLP funds is being sent to the borrower through a local Participating Lender, the disbursement should be made by electronic funds transfer with the preferred method of payment being the Automated Clearing House (ACH) system.

(3) Wire transfers. Wire transfers can be used if the ACH system is not available or if a same day disbursement is required.

(4) Joint payee check system. A two-party payee check system is required in which the Participating Lender and the borrower will be the co-payees of any checks paid to the borrower for performance under the assigned contract. Alternative payment methods must have prior written approval by DOT OSDBU.

(h) *Personal Guarantees.* Individuals who own at least a 20% ownership interest in the borrower shall personally guarantee the STLP loan. DOT OSDBU, in its discretion and in consulting with the Participating Lender, may require other appropriate guarantees for the loan as well.

(i) *Collateral.* All advances under the STLP loan must be secured, at a minimum, by the assignment of the proceeds due under the transportation-related contract(s) being funded with loan proceeds (the Assigned Contract). The Participating Lender must have first lien position on the Accounts Receivable generated by the Assigned Contract. The Participating Lender

§ 22.15

and/or DOT OSDBU may request additional collateral on any loan request or loan guarantee request in order to mitigate the credit risk and reduce potential defaults and loan losses.

(j) *Key Person Life Insurance.* The assignment of existing life insurance policies of personal guarantors or other individuals critical to the borrower's operations may be required by the Participating Lender and/or DOT OSDBU in certain instances; and it is encouraged for those business applicants that do not have a management succession plan clearly in place or where a personal guarantee provides nominal financial strength to the credit.

§ 22.15 Delinquency on Federal, State, or Municipality Debt.

(a) The borrower must not be delinquent on any Federal, State, or municipality debt, including tax debts. Further, none of the principals and/or owners of the borrower can be delinquent on any Federal, State, or municipality debt, including personal tax debt. The borrower must acknowledge its status in writing as part of any STLP loan guarantee application. Participating Lenders and the DOT OSDBU must verify the borrower's status through the use of business and personal credit reports, as well as other appropriate Federal and State databases.

(b) If any delinquencies are determined during the application process, consideration of the request must be suspended until the delinquency is satisfactorily resolved, as determined and approved by the Director. If the delinquency cannot be resolved within a reasonable amount of time, the loan request must be declined.

§ 22.17 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of a STLP Loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

- (a) An administrative order;
- (b) A court order;
- (c) A repayment agreement between the holder and a custodial parent; or

49 CFR Subtitle A (10–1–23 Edition)

(d) A repayment agreement between the holder and a State agency providing child support enforcement services.

§ 22.19 Credit criteria.

An applicant for a STLP loan must be creditworthy and demonstrate an ability to repay the loan as well as satisfactory handling of the repayment of past and current debts. The Participating Lender and DOT OSDBU shall consider:

- (a) Character, reputation, and credit history of the applicant, its principals and owners, and all other guarantors;
- (b) Experience and depth of key management in the industry;
- (c) Financial strength of the business;
- (d) Past earnings, projected earnings and cash flow, and work in progress;
- (e) Ability to repay the loan;
- (f) Sufficient equity to operate on a sound financial basis; and
- (g) Capacity to perform under the transportation-related contract(s).

Subpart C—Participating Lenders

§ 22.21 Participation criteria.

A lender who participates in the STLP must meet the following criteria:

- (a) It must operate as a lending institution certified by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, Community Development Corporation (CDC), or Community Development Financial Institution (CDFI), for at least five (5) years;
- (b) It must demonstrate a philosophy and history of lending to small, disadvantaged and women-owned businesses in their communities. Information will be requested by the Director on the number of short-term loans made to companies listed in paragraph (a)(5) of § 22.11. The Participating Lender shall submit information showing its efforts in relationship to its overall portfolio;
- (c) It must demonstrate experience in administering monitored lines of credit, such as construction loans, accounts receivable financing, and/or contract financing for at least two years. Such

experience should be held by any Participating Lender representative managing, reviewing or authorizing STLP loan portfolios;

(d) It must have at least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

(e) It must have at least a satisfactory or better Community Reinvestment Act (CRA) rating;

(f) It must designate a Participating Lender representative to effectively administer the STLP loan portfolio;

(g) It must have the ability to evaluate, process, close, disburse, service and liquidate STLP loans;

(h) It must demonstrate the ability to implement, monitor and manage a two-party payee check system, in which the Participating Lender and borrower are joint payees of any checks paid to the borrower for performance under the assigned contract(s);

(i) It must not currently be debarred or suspended from participation in a government contract or delinquent on a government debt. The Participating lender must submit a current form DOT F 2309-1 Certification Regarding Debarment, Suspension. The certification form is available at http://www.osdbu.dot.gov/financial/docs/Cert_Debarment_DOT_F_2309-1.pdf.

(j) It must be a drug-free workplace. The Participating Lender must execute current form DOT F 2307-1 Drug-Free Workplace Act Certification For A Grantee Other Than An Individual. The certification form is available at http://www.osdbu.dot.gov/financial/docs/Cert_Drug-Free_DOT_F_2307-1.pdf; and

(k) It must certify that no Federal funds will be utilized for lobbying by executing a current form DOT F 2308-1 Certificate Regarding Lobbying For Contracts, Grants, Loans, and Cooperative Agreements in compliance with section 1352, title 21, of the U.S. Code. The certification form is available at

http://www.osdbu.dot.gov/financial/docs/Cert_Lobbying_DOT_F_2308-1.pdf.

§ 22.23 Agreements.

(a) DOT OSDBU may enter into a cooperative agreement with a lender that meets the criteria defined in § 22.21 in order for the lender to become a Participating Lender in the STLP. Such an agreement does not obligate DOT OSDBU to participate in any specific proposed loan that a lender may submit. The existence of a cooperative agreement does not limit the rights of DOT OSDBU to deny a specific loan or establish general policies. The current cooperative agreement is available at http://www.osdbu.dot.gov/financial/docs/Coop_Agreement.pdf.

(b) The cooperative agreement is generally for a minimum period of twenty-four (24) months. DOT OSDBU will consider the cooperative agreement for renewal at the end of the designated term. If a cooperative agreement has expired, no further applications for the STLP shall be submitted to DOT OSDBU by the Participating Lender until a new cooperative agreement is executed by both parties.

(c) Unless instructed otherwise by DOT OSDBU, after the expiration of the cooperative agreement, the Participating Lender will complete the documentation of any loans which have been given final DOT OSDBU approval prior to expiration of the cooperative agreement.

(d) Following the expiration of the cooperative agreement, the Participating Lender may, subject to the written concurrence of DOT OSDBU, sell its STLP loans to another bank or to another Participating Lender that assumes the original rights and responsibilities to fund, service and collect the loan or loans.

§ 22.25 Lender deliverables and delivery schedule.

All Participating Lenders must adhere to certain required periodic reports, submissions, and other actions that are outlined in the cooperative agreement and the loan guarantee agreements, as well as to the required due dates to DOT OSDBU.

§ 22.27

§ 22.27 Eligible reimbursements to participating lenders.

Participating Lenders will be reimbursed by DOT OSDBU for reasonable expenses and costs that are incurred in the processing, administration, and monitoring of a STLP loan. The Participating Lender will be reimbursed as follows:

(a) *Processing/Underwriting Fee.* A fee, as specified in the cooperative agreement will be reimbursed by DOT OSDBU, with a minimum fee of not less than one thousand (\$1,000), per approved STLP loan guarantee, provided that DOT OSDBU receives proper notification of the activation date of the STLP loan.

(b) *Additional Administrative Fee:* For total loan amounts of \$150,000.00 or less, the Participating Lender can request an additional one-half (½) percent administrative fee for the increased loan monitoring and administrative assistance required to process the loan. The request must be supported with the information specified in the cooperative agreement.

(c) *Travel Expenses.* For any pre-approved travel expenses, the Participating Lender will be reimbursed for certain costs, provided that paragraphs (c)(1) and (2) of this section are met:

(1) A written request for travel, along with a statement of the purpose of the travel and proposed cost estimate, is submitted for DOT OSDBU for its approval no less than ten (10) business days prior to travel; and

(2) A travel invoice accompanied by a written report explaining the findings of the travel is submitted to DOT OSDBU no later than thirty (30) days following the approved travel. Payment or reimbursement for travel shall be in accordance with the Joint Travel Regulations, Federal Travel Regulations and DOD FAR 31.205.46.

(d) *Attorney Fees.* Legal fees incurred by the PL may be eligible for reimbursement. Prior written approval from DOT OSDBU is required. Attorney fees will be reimbursed on a pro-rata basis in proportion to the percentage of the government loan guarantee in relation to the total loan amount.

49 CFR Subtitle A (10–1–23 Edition)

§ 22.29 DOT access to participating lenders files.

A Participating Lender must allow the authorized representatives of DOT OSDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to DOT OSDBU guaranteed loans. Record retention of all relevant documents and other materials is specified in the cooperative agreement between DOT OSDBU and the Participating Lender.

§ 22.31 Suspension or revocation of eligibility to participate.

(a) DOT OSDBU may suspend or revoke the eligibility of a Participating Lender to participate in the STLP by giving written notice in accordance with the terms and conditions cited in the cooperative agreement. Such notice may be given because of a violation of DOT OSDBU regulations; a breach of any agreement with DOT OSDBU; a change of circumstance resulting in the Participating Lender's inability to meet operational requirements; or a failure to engage in prudent lending practices. A suspension or revocation will not invalidate a loan guarantee previously approved by DOT OSDBU, providing that the specific loan was handled in accordance with its guarantee agreement, the cooperative agreement and/or these regulations.

(b) The written notice to suspend or revoke participation in the STLP will specify the corrective actions that the Participating Lender must take, as well as the time period allowed for cure, prior to DOT OSDBU considering a termination of the cooperative agreement.

§ 22.33 Termination of participation in the STLP.

(a) *DOT OSDBU Termination for Convenience.* DOT OSDBU may terminate a cooperative agreement for the convenience of the government, and without cause, upon prior written notice of thirty (30) days of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received

by the PL which received the Director's final approval, prior to the effective date of termination.

(b) *Participating Lender's Termination.* The Participating Lender may terminate a cooperative agreement with written notice of sixty (60) days to DOT OSDBU of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the Participating Lender which received the Director's final approval, prior to the effective date of termination of the cooperative agreement.

(c) *DOT OSDBU Termination for Cause.* DOT OSDBU may terminate a cooperative agreement, in whole or in part, at any time before the expiration of the term of the cooperative agreement or the expiration of any renewal term of the cooperative agreement, and without allowing any cure period as described in this section, if it determines that the Participating Lender failed to comply with any terms and conditions of its cooperative agreement and such failure cannot be reasonably addressed. DOT OSDBU shall promptly notify the Participating Lender in writing of this determination and the reasons for the termination, together with the effective date of termination.

(d) DOT OSDBU may also terminate for cause any cooperative agreement with a Participating Lender that fails to comply with the corrective actions requested in a written notice of suspension of revocation within the specified cure period, in accordance with the terms and conditions further described in the cooperative agreement.

Subpart D—Loan Application Process

§ 22.41 Application procedures.

(a) A STLP loan guarantee request application package shall consist of the DOT OSDBU Application for Loan Guarantee and supporting documentation as outlined below at paragraph (b) of this section. The application may be obtained directly from the office of DOT OSDBU, from a current Participating Lender, or online from the agency's Web site, currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

(b) Supporting documentation may include, but is not limited to, the following items: Business, trade or job performance reference letters; current DBE or SDB eligibility certification letters and/or affidavit; signed and dated borrower certification that all federal, state and local taxes are current; business tax returns; business financial statements; personal income tax returns; personal financial statements; schedule of work in progress; signed and dated copy of transportation-related contracts; business debt schedule; income and cash flow projections; and evidence of bonding and insurance. It also includes, from the Participating Lender, the lender's internal credit approval memo and analysis and other third-party credit verifications obtained.

(c) Application packages are submitted directly to a Participating Lender, which will perform its own credit review. The Participating Lender must initially approve or decline the loan based upon its internal analysis of the request. Loans approved by the Participating Lender are then forwarded to DOT OSDBU for its STLP eligibility review, independent credit review, and for presentation to the DOT OSDBU Loan Committee. All loan approvals shall require the final approval of the Director, or the Director's designee, for the issuance of a Government Loan Guarantee.

§ 22.43 Approval or denial.

If a loan guarantee is approved by DOT OSDBU, a Guarantee Agreement, form DOT F 2314-1, will be issued to the Participating Lender. If a loan guarantee is declined by the Participating Lender, the Participating Lender is responsible for communicating the reasons for the decline to the applicant. The Participating Lender must notify the applicant, in writing, of the reasons for the decline; and a copy of this notification must be sent to DOT OSDBU. If a loan guarantee is declined by the DOT OSDBU, DOT OSDBU will be responsible for communicating the reasons for the decline to the applicant. The form is available at http://www.osdbu.dot.gov/financial/docs/Loan_Guarantee_DOT_F_2314-1.pdf.

§ 22.45

§ 22.45 Allowable fees to borrowers.

(a) *Application Fees.* The Participating Lender may charge the applicant a non-refundable loan application fee, as determined from time to time by DOT OSDBU, for each STLP loan application processed, whether a new loan request or a renewal request.

(b) *Reasonable Closing Expenses.* Provided the Participating Lender charges similar fees to its non-STLP borrowers, the Participating Lender may collect reasonable closing expenses from the borrower, provided that full disclosure of such fees is made to the borrower prior to the loan closing date. These expenses include necessary out-of-pocket expenses to third parties such as filing and recordation fees, as well as loan closing document preparation fees.

Subpart E—Loan Administration

§ 22.51 Loan closings.

(a) The Participating Lender must promptly close all STLP loans in accordance with the terms and conditions approved by DOT OSDBU in its Guarantee Agreement. The Participating Lender must report circumstances concerning any STLP loans not closed within a reasonable time period after DOT OSDBU approval.

(b) The Participating Lender uses its own internal loan closing documents and must use standard banking practices and procedures to ensure proper execution of the debt and perfection of the collateral. The Participating Lender must forward copies of all executed closing documents and filings to DOT OSDBU within the time period specified in the cooperative agreement.

§ 22.53 Loan monitoring and servicing requirements.

The Participating Lender must review STLP principal advance requests, process loan disbursements, and payments, and maintain contact with the borrower during the term of the loan. The Participating Lender must monitor the progress of the project being financed and the borrower's continued compliance with the terms and conditions of the loan. The Participating Lender must promptly report any ma-

49 CFR Subtitle A (10–1–23 Edition)

terial adverse change in the financial condition or business operations of the borrower to DOT OSDBU.

§ 22.57 Loan reporting requirements.

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. To fulfill the requirements of FCRA, the Participating Lender must provide DOT OSDBU prompt written notification of the activation date by the time period specified in the cooperative agreement. The Participating Lender must submit to OSDBU a form DOT F 2303–1 Bank Verification Loan Activation Form that indicates the date in which the loan has been activated/funded. The form is available at http://www.osdbu.dot.gov/financial/docs/Loan_Activation_DOT_F_2303-1.pdf. The Participating Lender must also provide DOT OSDBU prompt written notification of the date the loan is repaid and closed. The Participating Lender must submit to OSDBU a form DOT F 2304–1 Bank Acknowledgement Loan Close-Out Form upon full repayment of the STLP loan, or upon expiration of the loan guarantee. The form is available at http://www.osdbu.dot.gov/financial/docs/Loan_Close-Out_DOT_F_2304-1.pdf. To fulfill this requirement, the Participating Lender must also submit a monthly report to the DOT OSDBU detailing the previous month's activity for their STLP loans. The Participating Lender must submit form DOT F 2306–1 Pending Loan Status Report and form DOT F 2305–1 Guaranty Loan Status Report. These forms are available at http://www.osdbu.dot.gov/financial/docs/Pending_Loan_DOT_F_2306-1.xls and http://www.osdbu.dot.gov/financial/docs/Guaranty_Loan_DOT_F_2305-1.xls respectively.

§ 22.59 Loan modifications.

Any modification to the terms of the DOT OSDBU guarantee agreement must have prior written approval of the Director, and executed in writing as an Addendum to the original guarantee agreement.

§ 22.61 Loan guarantee extensions.

An extension of the original loan guarantee may be requested, in writing, by the Participating Lender. The Participating lender must submit to OSDBU a form DOT F 2310-1 to request an extension of the original loan guarantee for a maximum period of ninety (90) days. The form is available at http://www.osdbu.dot.gov/financial/docs/Loan_Extension_DOT_F_2310-1.pdf. The request must comply with the terms and conditions described in the guarantee agreement and with the STLP policies and procedures. All extension requests must be approved by the Director.

§ 22.63 Loan close outs.

Upon full repayment of the STLP loan, or upon expiration of the loan guarantee, the Participating Lender must submit to OSDBU a form DOT F 2304-1 Bank Acknowledgement Loan Close-Out Form. The form is available at http://www.osdbu.dot.gov/financial/docs/Loan_Close-Out_DOT_F_2304-1.pdf.

§ 22.65 Subordination.

DOT OSDBU must not be placed in a subordinate position to any other debt.

§ 22.67 Delinquent loans and loan defaults.

(a) The Participating Lender must bring to the immediate attention of the Director any delinquent STLP loans. The Participating Lender and DOT OSDBU are jointly responsible for establishing collection procedures and must exercise due diligence with respect to collection of delinquent debt. The Participating Lender is responsible for initiating actions to recover such debt. DOT OSDBU must approve any compromise of a claim, resolution of a dispute, suspension or termination of collection action, or referral for litigation. A work-out solution will only be considered if it is expected to minimize the cost to the federal government in resolving repayment delinquencies and/or loan default. They must only be used when the borrower is likely to be able to repay the loan under the terms of the work-out, and if the cost of establishing the work-out plan is less than the costs of loan default and/or foreclosure.

(b) In an appropriate situation, DOT OSDBU may authorize the Participating Lender to undertake legal action deemed necessary to collect delinquent loans and DOT will reimburse the Participating Lender on a pro rata basis in proportion to the loan guarantee percentage for the associated fees and costs, with prior authorization from the Director. Penalties and late fees are not eligible for reimbursement. Any legal action undertaken by the Participating Lender without OSDBU authorization will not be eligible for a pro rata basis reimbursement of the associated fees and costs. Net recoveries applicable to accrued interest must be applied on a pro rata basis in proportion to the formula used during the term of the loan.

§ 22.69 Claim process.

After reasonable efforts have been exhausted to collect on a delinquent debt, the Participating Lender may demand in writing that DOT OSDBU honor its loan guarantee, provided however that the maximum liability of DOT OSDBU shall not at any time exceed the guaranteed amount. The borrower must be in default for no less than thirty (30) days, and the Participating Lender must have made written demand for payment from the borrower, in accordance with the guarantee agreement.

PART 23—PARTICIPATION OF DIS-ADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

Subpart A—General

- Sec.
- 23.1 What are the objectives of this part?
 - 23.3 What do the terms used in this part mean?
 - 23.5 To whom does this part apply?
 - 23.7 Program reviews.
 - 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?
 - 23.11 What compliance and enforcement provisions are used under this part?
 - 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?