

AIR TRANSPORTATION STABILIZATION BOARD

APPLICATION FOR AIR CARRIER LOAN GUARANTEE

Note: Applicants that include in their application data that they do not want disclosed to the public for any purpose shall --

(1) Mark the title page with the following legend: *This application includes data that shall not be disclosed outside the Government consistent with the Freedom of Information Act (5 U.S.C. 552). The data subject to this restriction are contained in pages [insert numbers or other identification of pages];* and

(2) Mark each page of data it wishes to restrict with the following legend: *Use or disclosure of data contained on this page is subject to the restriction on the title page of this application.*

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The definitions of the terms contained in this application appear in the Air Transportation Safety and System Stabilization Act (the "Act"), P.L. 107-42 (2001) and in the regulations (the "Regulations") issued by the Office of Management and Budget under the Act, 14 CFR Part 1300-Aviation Disaster Relief-Air Carrier Guarantee Loan Program, effective October 11, 2001.

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CERTIFICATION: Information contained below and in attached exhibits is true and complete to my best knowledge. (Misrepresentation of material facts may be the basis for denial of a loan guarantee by the Board or prosecution.) Borrower certifies that it has reviewed the General Certifications contained in this application. Borrower's signature represents its agreement to comply with the limitations outlined in the General Certifications.

*Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years or both. "*

Name of Borrower \_\_\_\_\_

Name and Title of Certifying Official \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

## 1. BORROWER INFORMATION

A. BORROWER'S TAXPAYER ID NUMBER \_\_\_\_\_

B. BORROWER'S ADDRESS (Include Zip Code) \_\_\_\_\_

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C. CONTACT PERSON, TITLE AND TELEPHONE NUMBER (Include Area Code)

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### D. ELIGIBILITY REQUIREMENTS:

- i. Yes No      Has the Borrower incurred losses described in 14 CFR §1300.11(a)(1)?
- ii. Yes No      Is the Borrower an “air carrier” as defined in 49 U.S.C. §40102? Provide verification, e.g., the number of the air carrier’s FAA-issued certificate under 14 CFR Part 121 or 135.
- iii. Yes No      Is the Borrower under bankruptcy protection or receivership? (Note: Being subject to bankruptcy protection or receivership may make the Borrower ineligible for a loan guarantee under this program. If the answer is YES, then attach evidence demonstrating that the guarantee and the underlying financial obligation are to be part of a bankruptcy court-certified reorganization plan.)
- iv. Yes No      Does the Borrower agree to permit audits and reviews as described in section 14 CFR §1300.11(a)(3), (4) and (5)?
- v. Yes No      Does the Borrower agree that, during the 2-year period beginning September 11, 2001, and ending September 11, 2003, no officer or employee of the air carrier whose total compensation exceeded \$300,000 in calendar year 2000 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to September 11, 2001)—(1) will receive from the air carrier total compensation which exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the air carrier in calendar year 2000; and (2) will receive from the air carrier severance pay or other benefits upon termination of employment with the air carrier which exceeds twice the maximum total compensation received by the officer or employee from the air carrier in calendar year 2000?
- vi. Yes No      Does the Borrower have outstanding delinquent Federal debt, including tax liabilities? (Note: Being delinquent on Federal debt may be cause for rejection of the Borrower's application for a loan guarantee under this program. If the answer to this question is YES, attach information

showing one of the following: that the delinquency will be paid in full by the date of the loan guarantee, a negotiated repayment schedule is established, or other arrangements satisfactory to the agency responsible for collection of the debt are made).

**2. LENDER INFORMATION**

A. NAMES, ADDRESSES, AND TAXPAYER ID NUMBERS OF ALL LENDERS:

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B. NAME OF AGENT FOR LENDERS, IF MORE THAN ONE LENDER

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C. CONTACT PERSON, TITLE AND TELEPHONE NUMBER (Include Area Code)

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D. ELIGIBILITY REQUIREMENTS:

i. On what basis is each Lender a qualified institutional buyer as described in Section 102(a)(3) of the Act?

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ii. Yes No Does any Lender have outstanding delinquent Federal debt, including tax liabilities? (Note: Being delinquent on Federal debt may be cause for denial of the Lender's ability to participate in this loan guarantee program. If the answer to this question is YES, attach information showing one of the following: that the delinquency will be paid in full by the date of the loan guarantee, a negotiated repayment schedule is established, or other arrangements satisfactory to the agency responsible for collection of the debt are made).

iii. Yes No Is the proposed loan within each Lender's legal lending limit?

E. ADDITIONAL LENDER INFORMATION

i. Provide each Lender's regulatory capital ratios, in the case of banking institutions, or net worth, in the case of other institutions;

ii. Describe whether each Lender possesses the ability to administer the loan, including its experience with loans to air carriers.

### **3. LOAN CHARACTERISTICS**

- A. Attach summary of terms and conditions (Term Sheet). See attached example at end of application.
- B. What is the percentage of guarantee requested?

### **4. ADDITIONAL INFORMATION**

The Borrower must attach the following:

- A. All loan documents that will be signed by the Lender and the Borrower, if the application is approved, including all terms and conditions of, and security or additional security (if any), to assure the Borrower's performance under the loan.
- B. A certification by the Borrower that the Borrower meets each of the requirements of the program as set forth in the Act, the Regulations in this part, and any supplemental requirements issued by the Board. The Act authorizes the Board to issue Federal credit instruments only if the Board determines, in its discretion that (i) the obligor is an air carrier for which credit is not reasonably available at the time of the transaction; (ii) the intended obligation by the obligor is prudently incurred; and (iii) such agreement is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States.
- C. A certification by the Lender that the Lender meets each of the requirements of the program as set forth in the Act, the Regulations in this part, and any supplemental requirements issued by the Board, and that the Lender will provide the loan under the terms outlined in the loan documents if the Board approves the requested guarantee.
- D. A statement that the Borrower, prior to issuance by the Board of a guarantee, will notify the Board within 24 hours of filing for bankruptcy protection or being placed in receivership and that the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan.
- E. Consolidated financial statements of the Borrower for the previous five years that have been audited by an independent certified public accountant, including all associated notes, as well as all interim financial statements and associated notes for the current fiscal year.
- F. Copies of the financial evaluations and forecasts concerning the air carrier's air service operations that were prepared by or for the air carrier within the three months prior to September 11, 2001.
- G. The Borrower's business plan on which the loan is based that includes the following:

- i. A description of how the loan fits within the Borrower's business plan, the purposes for which the Borrower will use the loan, and an analysis showing that the loan is prudently incurred. If loan funds are to be used to purchase an existing firm (or the substantial assets of an existing firm), the business plan of the combined entity shall contain a discussion of the way in which any required regulatory or judicial approvals will be obtained, including antitrust approval for any proposed acquisition. The Borrower should note that the Board will give greater preference to those applications that meet the greatest number of evaluation criteria contained in the Regulations, which, in relevant part, give preference to applications that demonstrate that the air carrier has presented a plan demonstrating that its business plan is financially sound and that the guaranteed loan proceeds will be used for a purpose other than the payment or refinancing of existing debt;
  - ii. A discussion of a complete cost accounting and a range of revenue, operating cost, and credit assumptions;
  - iii. A discussion of the financing plan on which the loan is based, showing that the operational needs of the Borrower will be met during the term of the plan;
  - iv. An analysis demonstrating that, at the time of the application, there is a reasonable assurance that the Borrower will be able to repay the loan according to its terms, and a complete description of the operational and financial assumptions on which this demonstration is based;
  - v. A discussion of the Borrower's five-year history and five-year pro forma income statements, balance sheets, statements of cash flows, revenue per available seat-mile projections, and cost per available seat-mile projections (including the underlying assumptions and bases) and a demonstration that the Borrower will be able to continue operations if the requested guarantee is approved; and
  - vi. If appropriate, a description of a plan to restructure the Borrower's obligations, contracts, and costs. In preparing this description, the Borrower shall jointly develop, with its existing secured and unsecured creditors, employees, or vendors, an agreed-upon plan to restructure the Borrower's obligations, contracts and costs and incorporate this into the business plan submitted. The Borrower should note that the Board will give greater preference to those applications that meet the greatest number of evaluation criteria contained in the Regulations, which in relevant part, give preference to applications that provide a demonstration of concessions by the air carrier's security holders, other creditors, or employees that will improve the financial condition of the air carrier in a manner that will enable it to repay the loan in accordance with its terms and provide commercial air services on a financially sound basis after repayment.
- H. A description of the losses that the Borrower incurred (or is incurring) as a result of the terrorist attacks on the United States that occurred on September 11, 2001, which may include losses due to the unavailability of credit on reasonable terms or reduced demand (beyond normal seasonality demand patterns) for the air carrier's services.
- I. An analysis that demonstrates that the issuance of the guaranteed loan is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United

States and an analysis that credit is not reasonably available at the time of the transaction. Provide documentation, evidence, or proof that credit is not reasonably available to the Borrower. To corroborate the air carrier's contribution in maintaining a safe, efficient, and viable commercial aviation system in the United States, provide a comprehensive profile of the air carrier, its market position, and previous business plan. For example, this profile could include, but not necessarily be limited to, information about the air carrier's major cities and city-pair markets served and market shares; number of passengers carried; service to small communities; marketing and operational alliances; pricing policies; fleet and fleet acquisition plans; cost structure; management-labor relations; and the air carrier's role in transporting freight, mail, or defense-related materials, including shipments essential for the continuation of just-in-time delivery or distribution systems.

- J. A description of all security (if any) for the loan, including, as applicable, current appraisals of real and personal property, and current personal and corporate financial statements of any guarantors for the same period as required for the Borrower. Appraisals of real property shall be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Financial statements of guarantors shall be prepared by independent certified public accountants.
- K. If appropriate, a description of the Federal Government's ability to participate, contingent on the financial success of the Borrower, in the gains of the Borrower or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments. The Borrower should note that the Board will give greater preference to those applications that meet the greatest number of evaluation criteria contained in the Regulations, which, in relevant part, gives preference to applications that demonstrate that the proposed instruments would ensure that the Federal Government will, contingent on the financial success of the air carrier, participate in the gains of the air carrier and its security holders;
- L. The Lender's loan servicing plan (field inspection, interim statements, annual audits, and credit analyses, etc.)
- M. The Lender's complete written credit assessment and any underwriting analysis on the loan to be guaranteed by the Board.

*Note: The Board reserves the right to request any other information.*

## GENERAL LENDER CERTIFICATION

Lender, on behalf of itself and, if acting as agent, for the group of Lenders, certifies that it has reviewed the General Certifications contained in this application. Lender's signature represents its agreement to comply with the limitations outlined in the General Certifications.

Lender certifies that it meets all criteria to be considered as an eligible Lender.

Lender certifies that it has followed the same loan underwriting analysis with the loan to be guaranteed as it would follow on for a loan not guaranteed by the Federal Government.

*Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years or both. "*

Lender's Name \_\_\_\_\_ Officer Title \_\_\_\_\_

Officer Signature \_\_\_\_\_ Date \_\_\_\_\_

## PAPERWORK REDUCTION ACT

Public reporting for this collection of information is estimated to average 48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

Air Transportation Stabilization Board  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Room 2412  
Washington, D.C. 20220.

You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

## SUBMISSION OF APPLICATION

Upon completion, this form and all attachments to it, along with 4 copies of the completed form and all attachments, should be sent to the Board at the above address. The applicant should also include in the application package the information required under Sections 4(E) and 4(G)(v) of this application in electronic spreadsheet format on one or more computer diskettes.

Applications will not be accepted via facsimile machine or electronic mail. No application will be accepted for review if it is not received by the Board on or before June 28, 2002.

## PRIVACY ACT STATEMENT

Pub. L. No. 107-42 authorizes collection of this information. Section 7701 of title 31, United States Code authorizes the collection of taxpayer identification numbers. The primary purpose of this information is to evaluate the loan guarantee application, but it may also be used for debt collection if the guaranteed loan is in default. Additional disclosures of this information may be made: to a Federal, State or local law enforcement agency, when the Board becomes aware of a possible violation of civil or criminal laws; to a Federal, State or local agency maintaining enforcement or other relevant information to obtain information related to the Board's decision whether to issue a guarantee; to a court magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel in the course of settlement negotiations; to the Department of Justice in connection with determining whether disclosure is required by the Freedom of Information Act (5 U. S.C. 552); to a contractor of the Board having need for the information in the performance of the contract; to the Administrator, General Services Administration, or a designee, during an inspection of records conducted as part of GSA's responsibility to recommend improvements in records management practices and programs; and to the Department of the Treasury or the Department of Justice in connection with claims collection or offset under the Debt Collection Improvements Act of 1996. Furnishing the requested information is voluntary, but failure to do so may result in denial of the requested loan guarantee.



## GENERAL CERTIFICATIONS

### (1) RESTRICTIONS AND DISCLOSURE OF LOBBYING ACTIVITIES

The Borrower and Lender each state, to the best of his or her knowledge and belief, that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure.

### (2) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 31 C.F.R. §19.510 Participants' responsibilities. The regulations were published as part 19 of 31 C.F.R. Copies of the regulations may be obtained by contacting the Board. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with Board's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance will be placed when the Board determines to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Board may terminate this transaction for cause.

The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into a lower tier covered transaction with a person who is debarred, suspended, ineligible, or voluntarily excluded from

participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tiered Transactions", provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under the regulations, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

(A) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of Federal, or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property,
- (3) are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification, and
- (4) have not within a three-year period preceding this application or proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(B) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **SAMPLE SUMMARY OF TERMS AND CONDITIONS**

**BORROWER:**

**GUARANTORS (BOTH NON-FEDERAL AND PRIVATE ENTITIES):**

**GUARANTEE PERCENTAGE (FEDERAL AND NON-FEDERAL):**

**ADMINISTRATIVE AGENT:**

**LEAD ARRANGER AND SYNDICATION AGENT:**

**LENDERS:**

**FACILITY TYPE:**

**AMOUNT:**

**DRAWDOWN DATE(S):**

**PURPOSE:**

**EXPIRATION DATE:**

**FEES/EXPENSES:**

**COMMITMENT FEE**

**INTEREST RATES (Include Base Rate and Margin)**

**PRICING GRID**

**CALCULATION OF INTEREST AND FEES**

**COST AND YIELD PROTECTION**

**EXPENSES**

**MATURITY:**

**AVAILABILITY:**

**SCHEDULED AMORTIZATION:**

**SECURITY:**

**MANDATORY PREPAYMENTS AND COMMITMENT REDUCTIONS:**

**OPTIONAL PREPAYMENTS AND COMMITMENT REDUCTIONS:**

**CONDITIONS PRECEDENT TO CLOSING:**

CONDITIONS PRECEDENT TO ALL LOANS:

REPRESENTATIONS AND WARRANTIES:

AFFIRMATIVE COVENANTS:

NEGATIVE COVENANTS:

FINANCIAL COVENANTS:

REMEDIES:

EVENTS OF DEFAULT:

ASSIGNMENTS AND PARTICIPATIONS:

WAIVERS AND AMENDMENTS:

GOVERNING LAW:

WARRANTS/OPTIONS:

WARRANT PERCENTAGE

PURCHASE PRICE/EXERCISE PRICE

CALL

EXIT PROTECTION

ANTIDILUTION

COVENANTS

OTHER: