

## Air Trans. System Stabilization

## § 1300.17

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;

(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 projection for revenue, cash flow, average realized prices, and average realized operating costs 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;

(9) 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, including losses due to the unavailability of credit on reasonable terms or a decrease in demand for the air carrier's services;

(10) 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 that credit is not reasonably available at the time of the transaction;

(11) A description of all security (if any) for the loan, including, as applicable, current appraisals of real and personal property, copies of any appropriate environmental site assessments, 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;

(12) 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; and

(13) Any other information requested by the Board.

(c) The collections of information in this section and elsewhere in this part that are subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) have been approved by OMB and assigned control number 0348-0059. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### § 1300.17 Application evaluation.

(a) Eligibility screening. Applications will be reviewed to determine whether the lender and borrower are eligible, the information required under § 1300.16(b) is complete, and the proposed loan complies with applicable statutes and regulations. The Board may at any time reject an application that does not meet these requirements.

(b) Evaluation criteria. Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review by the Board. In addition to the general standards for Board issuance of Federal credit instruments set forth in

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§ 1300.10, the Board shall consider the following evaluation factors:

(1) Reasonable assurance that the borrower will be able to repay the loan by the date specified in the loan document, which shall be no later than seven years from the date on which the first disbursement of the loan is made;

(2) The adequacy of the proposed provisions to protect the Federal Government, including sufficiency of any security provided by the borrower and the percentage of guarantee requested;

(3) The ability of the lender to administer the loan in full compliance with the requisite standard of care. In making this determination, the Board will assess:

(i) The lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of other institutions;

(ii) Whether the lender possesses the ability to administer the loan, including its experience with loans to air carriers; and

(iii) Any other matter the Board deems material to its assessment of the lender; and

(4) The ability of the borrower to demonstrate, to the Board's satisfaction, one or more of the following criteria. The Board shall give preference to applications that satisfy one or more of these criteria, giving greater preference to those applications that meet the greatest number of these criteria, as follows:

(i) A demonstration that the air carrier has presented a plan demonstrating that its business plan is financially sound;

(ii) A demonstration of greater participation in the loan by non-Federal entities;

(iii) A demonstration of greater participation in the loan by private entities, as opposed to public non-Federal entities;

(iv) A demonstration 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;

(v) 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;

(vi) A demonstration that guaranteed loan proceeds will be used for a purpose other than the payment or refinancing of existing debt;

(vii) A demonstration that the proposed instruments contain financial structures that minimize the Federal government's risk and cost associated with making loan guarantees. Examples include, but are not limited to, requests for guarantees that contain the following:

(A) A maturity period that is less than the maximum permitted under the rules in this part;

(B) Pledges of collateral;

(C) Agreements by the borrower's parent or other entities to reimburse the Federal government for any payments that the Federal government may make under the guarantee;

(D) A grant to the Federal government of favorable priority in the event of bankruptcy reflecting other creditors' agreement to subordinate their debts as a condition of the loan guarantee;

(E) Limitation of the borrower's issuance of dividends and/or the borrower's payments to its parent or subsidiaries or related companies;

(F) Limitation of the borrower's ability to incur additional debt, and/or the borrower's ability to incur capital expenditures, beyond that set forth in the business and financial plans that the Borrower submitted with the application;

(G) A demonstration of reasonable liquidity;

(H) A demonstration of favorable debt ratios; and

(I) A demonstration that any proceeds raised from private sector financing subsequent to disbursement of the federally guaranteed loan be used to repay the federally guaranteed loan.

(c) No guarantee will be made if either the borrower or lender has an outstanding delinquent Federal debt, including tax liabilities, until:

(1) The delinquent debt has been paid in full;

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(2) A negotiated repayment schedule is established; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt are made.

(d) Decisions by the Board. The Board shall approve or deny applications received on or before June 28, 2002, in a timely manner as such applications are received. The Board may limit the amount of a loan guarantee made to initial applicants to ensure that sufficient funds remain available for subsequent applicants. The Board shall notify the borrower in writing of the approval or denial of an application. Approvals for loan guarantees shall be conditioned upon compliance with § 1300.18.

### § 1300.18 Issuance of the guarantee.

(a) The Board's decisions to approve any application for a guarantee under § 1300.17 is conditioned upon:

(1) The lender and borrower obtaining any required regulatory or judicial approvals;

(2) Evidence showing, to the Board's satisfaction, that the lender and borrower are legally authorized to enter into the loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the loan documents and any related instruments, in form and substance satisfactory to the Board, and the guarantee, all properly executed by the lender, borrower, and any other required party other than the Board; and

(4) No material adverse change in the borrower's ability to repay the loan or any of the representations and warranties made in the application between the date of the Board's approval and the date the guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of guarantee if the Board determines that the lender or the borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation required by this section, will the Board sign and deliver the guarantee.

(d) A borrower receiving a loan guaranteed by the Board under this program shall pay an annual fee, in an amount and payable as determined by the Board. At the time that the guarantee is issued, the Board shall ensure that this annual fee will escalate for each year that the loan is outstanding and that such annual escalation reflects the borrower's potential ability to obtain credit in the private credit markets, in addition to any other factors the Board may deem appropriate.

### § 1300.19 Assignment or transfer of loans.

Neither the loan documents nor the guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the lender, in whole or in part, without the prior written approval of the Board.

### § 1300.20 Lender responsibilities.

The lender shall have such obligations and duties to the Board as are set forth in the guarantee.

### § 1300.21 Guarantee.

The Board shall adopt a form of guarantee to be used by the Board under the program. Modifications to the provisions of the form of guarantee must be approved and adopted by the Board.

### § 1300.22 Termination of obligations.

The Board shall have such rights to terminate the guarantee as are set forth in the guarantee.

### § 1300.23 Participation in guaranteed loans.

(a) Subject to paragraph (b) of this section, a lender may distribute the risk of a portion of a loan guaranteed under the program by sale of participations therein if:

(1) Neither the loan note nor the guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(2) The lender remains solely responsible for the administration of the loan; and

(3) The Board's ability to assert any and all defenses available to it under the guarantee and the law is not adversely affected.