

## **OFFICE OF MANAGEMENT AND BUDGET**

### **14 CFR Part 1300**

#### **Regulations For Air Carrier Guarantee Loan Program under Section 101(a)(1) of the Air Transportation Safety and System Stabilization Act**

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final Rule

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**SUMMARY:** These regulations are issued under Section 102(c)(2)(B) of the Air Transportation Safety and System Stabilization Act, P.L. 107-42. That section states that “the Director of the Office of Management and Budget shall issue regulations setting forth procedures for application and minimum requirements . . . for the issuance of Federal credit instruments under Section 101(a)(1)” of the Act. Section 101(a)(1) authorizes the Air Transportation Stabilization Board, which is established by section 102(b)(1) of the Act, to issue Federal credit instruments (as defined in section 107(2) of the Act) that, in the aggregate, do not exceed \$10 billion. The purpose of these Federal credit instruments is to assist air carriers who suffered losses due to the terrorist attacks of September 11, 2001, and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system in the United States. The Act was signed into law on September 22, 2001, and directs the Office of Management and Budget (“OMB”) to issue implementing regulations “[n]ot later than 14 days after the date of enactment of this Act.” Consistent with this requirement, these regulations are issued on a final basis and are effective upon publication.

**EFFECTIVE DATE:** October 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Clare Doherty, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395-5704.

**SUPPLEMENTARY INFORMATION:** On the morning of September 11, 2001, terrorists hijacked four commercial passenger airliners. Two of the planes crashed into the World Trade Center in New York City, causing the two towers to collapse and killing more than 5,000 people. A third plane crashed into the Pentagon, killing nearly 200 people. The fourth plane, apparently heading toward another target, crashed in western Pennsylvania, killing its crew and dozens of passengers. In response to these terrorist attacks, the Federal Aviation Administration issued a Federal ground stop order on September 11, 2001, prohibiting all flights to, from, and within the United States. Airports did not reopen until September 13 (except for Reagan National Airport, which partially reopened on October 4, 2001). Consumer demand for passenger air services has declined significantly since the terrorist attacks.

In response to the terrorist attacks, Congress passed and President Bush signed into law on September 18, 2001, the Emergency Supplemental Appropriations Act for Recovery From and Response to Terrorist Attacks on the United States (P.L. 107-38). The Emergency Supplemental Appropriations Act provided \$40 billion for the Federal response to the terrorist attacks, assistance to the victims of the attacks, and other consequences of the attacks.

The U.S. commercial aviation industry suffered severe losses as a result of the terrorist attacks. As noted in the legislative history of the Act, these losses have placed the financial survival of many air carriers at risk, in part because these carriers do not have adequate access to credit markets. To address this problem, Congress passed and President Bush signed into law on September 22, 2001, the Air Transportation Safety and System Stabilization Act (P.L. 107-42) (the “Act”).

The Act addresses airline stabilization, aviation insurance, tax provisions, victim compensation, and air transportation safety. Section 101(a)(2) of the Act provides \$5 billion to compensate air carriers for the direct losses incurred as a result of the Federal ground stop order and incremental losses that they incur through December 31, 2001, as a result of the terrorist attacks. Section 101(a)(1) of the Act authorizes the issuance to air carriers of Federal credit instruments that, in the aggregate, shall not exceed \$10 billion. The purpose of these Federal credit instruments is to assist air carriers who suffered losses due to the terrorist attacks of September 11, 2001, and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system in the United States. These final regulations are issued to implement section 101(a)(1) of the statute.

The Air Transportation Stabilization Board (the “Board”), which is established by Section 102(b) of the Act, is empowered to enter into agreements to issue these loan guarantees and other Federal credit instruments authorized under section 102(b) of the Act. The Board is composed of the Chairman of the Board of Governors of the Federal Reserve System (who is Chairman of the Board), the Secretary of Transportation, the Secretary of the Treasury, and the Comptroller General (who is a nonvoting member), or their designees. Title I of the Act establishes a number of conditions and restrictions for the issuance of loan guarantees and other Federal credit instruments.

Section 102(c)(2)(B) of the Act directs the Director of OMB to “issue regulations setting forth procedures for application and minimum requirements . . . for the issuance of Federal credit instruments under Section 101(a)(1)” of the Act. Consistent with this requirement, OMB issues these regulations on a final basis, effective upon publication. Based on the very short deadline imposed upon it by the statute, OMB has determined it is appropriate to publish these rules without first obtaining public comment. Section 553(a) of the Administrative Procedure Act (“APA”) exempts from its rulemaking requirements those agency actions that concern “loans, grants, benefits, or contracts.” 5 U.S.C. § 553(a). This loan guarantee program falls squarely within this exception to the requirements otherwise imposed by section 553.

Moreover, to the extent that section 553’s notice-and-comment requirements may apply to this action, we conclude that there is “good cause” under sections 553(b)(B) and 553(d), to issue the rule

without prior public comment, effective immediately. The tight timeframe dictated by the statute makes compliance with these requirements impracticable and contrary to the public interest. *See Methodist Hospital v. Shalala*, 38 F.3d 1225, 1235 (D.C. Cir. 1994); *Petry v. Block*, 737 F.2d 1193, 1203 (D.C. Cir. 1984); *Valiant Steel & Equipment v. Goldschmidt*, 499 F. Supp. 410, 412 (D.D.C. 1980). In requiring OMB to issue the regulations within 14 days, Congress plainly intended to ensure that the loan guarantee program be implemented as swiftly as possible. The public interest is therefore served by having these regulations become effective upon publication, so that the Board can begin operations, and air carriers can submit applications to the Board at their earliest convenience.

## **Regulatory Impact**

### **A. Executive Order 12866.**

OMB's Office of Information and Regulatory Affairs ("OIRA") has determined that this rule is an economically significant regulatory action under Executive Order 12866, Regulatory Planning and Review, based on its finding that the rule will have an annual effect on the economy of \$100 million or more. The Director of OMB is required to issue implementing regulations under the Act not later than 14 days after the enactment of this statute. In accordance with the procedures regarding such emergency regulatory actions as discussed in section 6(a)(3)(D) of Executive Order 12866, OMB has, to the extent practicable, complied with the requirements of this Executive Order.

This rule establishes the application procedure and minimum requirements that will apply to up to \$10 billion in loan guarantees (or other Federal credit instruments) to air carriers to compensate them for the losses they incurred as a result of the terrorist attacks on the United States that occurred on September 11, 2001. The loan guarantees will translate into a "credit subsidy" of some amount not yet determined. This program is expected to generate social benefits by mitigating the costs incurred by the airline industry as a result of the September 11 attacks. Such costs include the transaction costs associated with business closings due to short-run financial or economic dislocations caused by the September 11 attacks, which could be followed by start-up costs when demand for air service increases and other financial problems resulting from the terrorist attacks ease. Such transaction costs for the airline industry may be more significant than for other industries, and society will benefit to the extent these costs are avoided through the loan guarantee program. In addition to the benefits that will result from the loan guarantee program, there will be some administrative costs of this rule to participants in the loan guarantee program. There are also unknown opportunity costs associated with this rule, because it may mean that finite resources, which would have been spent elsewhere absent this rule, are allocated to loan guarantees. There is also a risk of loss to the Federal government in the event of default on loans.

### **B. Other Regulatory Analyses.**

This rule is not a "significant energy action" under Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a

Statement of Energy Effects under Executive Order 13211 is not required. This rule will not effect a taking of private property or otherwise have implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children under Executive Order 13045, Protection of Children from Environmental Risks and Safety Risks.

### **C. 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. OMB has conducted a review of this final rule and certifies that it will not have a significant impact on a substantial number of small entities.

It is possible that small entities will seek Federal credit instruments under this program. However, the cost to these entities of applying for this assistance program should be minimal since borrowers will normally have available the information needed to prepare applications for funding. In addition, participation in this program is voluntary. As such, OMB concludes that this rule will not have a significant impact on a substantial number of small entities.

### **D. Congressional Review Act.**

This is a major rule under Section 804(2) of the Congressional Review Act (5 U.S.C. § 801 *et seq.*). Under the Congressional Review Act, major rules, in general, can not take effect until 60 days after the rule is published in the Federal Register. However, Section 808(2) of the Congressional Review Act states that agencies may waive this effective date requirement for “good cause” and establish an earlier effective date. As explained above, to the extent that section 553’s notice-and-comment requirements apply to this rulemaking, OMB has determined that there is “good cause” to issue this final rule without seeking prior public comment, effective immediately upon publication, because OMB is statutorily required to issue the regulations within 14 days of the enactment of the Act, and because it is important that the loan guarantee program began operations as soon as possible. For these same reasons, there is “good cause” under section 808(2) to make this rule effective immediately upon publication.

### **E. Paperwork Reduction Act.**

The information collection requirements of this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*) under emergency approval procedures at 5 CFR 1320.13. The OMB control number assigned to this collection is 0348-0059. OMB estimates that there may be up to 150 respondents under this program and estimates that the total annual burden to the public of the information collection activities associated with this rule would be 6,000 hours using that high-end estimate of respondents. Based on a cost of \$50 per hour, the

monetized hour cost of this information collection is \$300,000. The Paperwork Reduction Act provides that 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.

#### **F. Unfunded Mandates Reform Act.**

This rule is not subject to the analytical requirements of the Unfunded Mandates Reform Act, 2 U.S.C. §§ 1531-38, because it will not result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million or more in any one year.

#### **G. Federalism and Indian Tribal Implications.**

Executive Order 13132, entitled, “Federalism,” was issued on August 4, 1999, and took effect November 2, 1999. OMB has reviewed this rule for federalism implications, and certifies that this rule will not have a substantial effect on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Also, this rule does not have tribal implications under Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments.” The rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

#### **H. National Environmental Policy Act.**

OMB has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, Public Law 91-190 (NEPA). If necessary, loans sought to be guaranteed under the program will be assessed by the Board to determine appropriate compliance with NEPA. In this regard, we note that the Board is authorized to issue supplemental regulations for the air carrier loan guarantee program.

**List of Subjects in 14 CFR Part 1300**

Loan programs – Transportation; Reporting and Recordkeeping requirements.

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Dated: October \_\_\_\_, 2001

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Mitchell E. Daniels, Jr.  
Director, Office of Management and Budget

For the reasons set forth in the preamble, the Office of Management and Budget establishes in title 14 of the Code of Federal Regulations a new chapter VI consisting of part 1300 as follows:

## CHAPTER VI – OFFICE OF MANAGEMENT AND BUDGET

### PART 1300 – AVIATION DISASTER RELIEF -- AIR CARRIER GUARANTEE LOAN PROGRAM

#### Subpart A -- General

Sec.

1300.1 Purpose.

1300.2 Definitions.

#### Subpart B -- Minimum Requirements and Application Procedures

1300.10 General Standard for Board Issuance of Federal Credit Instruments.

1300.11 Eligible Borrower.

1300.12 Eligible Lender.

1300.13 Guarantee amount.

1300.14 Guarantee percentage.

1300.15 Loan terms.

1300.16 Application process.

1300.17 Application evaluation.

1300.18 Issuance of the Guarantee.

1300.19 Assignment or transfer of loans.

1300.20 Lender responsibilities.

1300.21 Guarantee.

1300.22 Termination of obligations.

1300.23 Participation in guaranteed loans.

Authority: Title I of Pub. L. 107-42.

Source:

#### **Subpart A--General**

#### **Section 1300.1 Purpose.**

This part is issued by the Office of Management and Budget (OMB) pursuant to Title I of the Air Transportation Safety and System Stabilization Act, Public Law 107-42 (“Act”). Specifically, Section 102(c)(2)(B) directs OMB to issue regulations setting forth procedures for application and minimum requirements for the issuance of Federal credit instruments under section 101(a)(1) of the Act.

## **Sec. 1300.2 Definitions.**

- (a) “Act” means the Air Transportation Safety and System Stabilization Act, Public Law 107-42.
- (b) “Administer,” “administering” and “administration,” mean the lender’s actions in making, disbursing, servicing (including, but not limited to care, preservation and maintenance of collateral), monitoring, collecting, and liquidating a loan and security.
- (c) “Agent” means that lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all lenders party to a guarantee of a single loan, as is required by, or necessarily incidental to, the terms and conditions of the guarantee.
- (d) “Air Carrier” means an air carrier as defined in 49 U.S.C. § 40102.
- (e) “Applicant” means one or more air carriers applying for a Federal credit instrument issued by the Board under the program.
- (f) The “Board,” for purposes of any operational and decisionmaking functions in connection with individual loan guarantees, means the voting members of the Air Transportation Stabilization Board established under Section 102 of the Act. The voting members of the Board are the Chairman of the Board of Governors of the Federal Reserve System (who is the Chairman of the Board), the Secretary of the Treasury and the Secretary of Transportation, or their designees. The Comptroller General, who is a nonvoting member, will not participate in the review, operations, or deliberations of the Board in connection with individual loan guarantees, or otherwise participate in the Board’s exercise of any executive power, but may provide such audit, evaluation and other support to the Board as the Board may request, consistent with applicable auditing standards.
- (g) “Borrower” means an “Obligor,” as defined in Section 102(a)(4) of the Act, and includes an air carrier that is primarily liable for payment of the principal of and interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.
- (h) “Federal credit instrument,” as defined in Section 107(2) of the Act, means any guarantee or other pledge by the Board issued under the program to pledge the full faith and credit of the United States to pay all or part of any of the principal of and interest on a loan issued by a borrower and funded by a lender.
- (i) “Financial obligation,” as defined in Section 102(a)(2) of the Act, means any note, bond, debenture, or other debt obligation issued by a borrower in connection with financing under the program.



- (j) “Guarantee” means the written agreement between the Board and one or more lenders, pursuant to which the Federal government guarantees repayment of a specified percentage of the principal of and/or interest on the loan. Unless otherwise specified, guarantee includes any other pledge issued under a Federal credit instrument.
- (k) “Lender” means any non-Federal qualified institutional buyer, as defined in Section 102(a)(3) of the Act, that funds a financial obligation subject to a guarantee issued by the Board. With respect to a guarantee of a single loan to which more than one lender is a party, the term lender means agent.
- (l) “Loan,” unless otherwise specified, includes any financial obligation (*i.e.*, note, bond, debenture, or other debt obligation) issued by a borrower.
- (m) “Loan Documents” mean the loan agreement and all other instruments, and all documentation between the lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of the loan. (References to loan documents also include comparable agreements, instruments, and documentation for other financial obligations for which a guarantee is requested or issued.)
- (n) “Program” means the air carrier guarantee loan program established by section 101(a)(1) and the related provisions of Title I of the Act.
- (o) “Security” means all property, real or personal, required by the provisions of the guarantee or by the loan documents to secure repayment of any indebtedness of the borrower under the loan documents or guarantee.

### **Subpart B-- Minimum Requirements and Application Procedures**

#### **Sec 1300.10 General Standards for Board Issuance of Federal Credit Instruments.**

- (a) In accordance with section 102(c)(1) of the Act, the Board may enter into agreements with one or more borrowers to issue Federal credit instruments only if the Board determines, in its discretion and in accordance with the minimum requirements set forth in this part, that –
  - (1) the borrower is an air carrier for which credit is not reasonably available at the time of the transaction;
  - (2) the intended obligation by the borrower is prudently incurred; and
  - (3) such agreement is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States.

- (b) In accordance with section 102(c)(2)(A) of the Act, the Board shall enter into an agreement to issue a Federal credit instrument in such form and on such terms and conditions and subject to such covenants, representations, warranties, and requirements (including requirements for audits) as the Board determines are appropriate for satisfying the requirements of this part and any supplemental requirements issued by the Board under section 102(c)(2)(B) of the Act
- (c) In accordance with section 102(d)(1) of the Act, in entering into agreements to issue Federal credit instruments, the Board shall, to the extent feasible and practicable and in accordance with the requirements in this part, ensure that the Federal Government is compensated for the risk assumed in making guarantees.
- (d) In accordance with Section 102(d)(2) of the Act, the Board is authorized to enter into contracts under which the Federal Government, contingent on the financial success of the air carrier, would participate in the gains of the air carrier or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments, except that the Board shall not accept an equity interest in an air carrier that gives the Federal Government voting rights.
- (e) In accordance with Section 104(a) of the Act, the Board may only issue a Federal credit instrument to an air carrier after the air carrier enters into a legally binding agreement with the Board regarding certain employee compensation.

**Sec. 1300.11 Eligible Borrower.**

- (a) An eligible borrower must be an air carrier that can demonstrate, to the satisfaction of the Board, that:
  - (1) It has incurred (or is incurring) losses 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 or the decrease in demand for that air carrier's services;
  - (2) It is not under bankruptcy protection or receivership when the application is submitted or when the Board issues the guarantee, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;
  - (3) It has agreed to permit such audits and reviews prior to the issuance of a guarantee, as the Board may deem appropriate, by an independent auditor acceptable to the Board;
  - (4) It has agreed to permit such audits and reviews during the period the loan is outstanding and three years after payment in full of the guaranteed loan, as the Board may deem appropriate, by an independent auditor acceptable to the Board or by the Comptroller General;

(5) In conducting audits and reviews pursuant to sections (2) and (3) of this subsection, it has agreed to provide access to the officers and employees, books, records, accounts, documents, correspondence, and other information of the borrower, its subsidiaries, affiliates, financial advisers, consultants, and independent certified accountants that the Board or the Comptroller General consider necessary.

(b) Status as an eligible borrower under this section does not ensure that the Board will issue the guarantee sought or preclude the Board from declining to issue a guarantee.

**Sec. 1300.12 Eligible Lender.**

- (a) A lender eligible to receive a Federal credit instrument approved by the Board must be a non-Federal qualified institutional buyer as defined in Section 102(a)(3) of the Act.
- (b) If more than one institution participates as a lender in a single loan for which a Federal credit instrument is requested, each one of the institutions on the application must meet the requirements to be an eligible lender. An application for a guarantee of a single loan, for which there is more than one lender, must identify one of the institutions to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the guarantee.
- (c) Each lender, irrespective of any indemnities or other agreements between the lenders and the agent, shall be bound by all actions, and/or failures to act, of the agent. The Board shall be entitled to rely upon such actions and/or failures to act of the agent as binding the lenders.
- (d) Status as an eligible lender under this section does not assure that the Board will issue the guarantee sought, or otherwise preclude the Board from declining to issue a guarantee.

**Sec. 1300.13 Guarantee amount.**

- (a) Under Section 101(a)(1) of the Act, the Board is authorized to enter into agreements to issue Federal credit instruments that, in the aggregate, do not exceed \$10 billion.
- (b) The loan amount guaranteed to a single air carrier may not exceed that amount that, in the Board's sole discretion, the air carrier (or its successor) needs in order for it to provide commercial air services.

**Sec. 1300.14 Guarantee percentage.**

A guarantee issued by the Board must be less than 100 percent of the amount of principal and accrued interest of the loan guaranteed.

### **Sec. 1300.15 Loan terms.**

- (a) A loan guaranteed under the program shall be due and payable in full no later than seven years from the date on which the first disbursement of the loan is made.
- (b) Loans guaranteed under the program must bear a rate of interest determined by the Board to be reasonable. In determining the reasonableness of an interest rate, the Board shall consider the percentage of the guarantee, any collateral, other loan terms, and current average yields on outstanding obligations of the United States with maturity comparable to the term of the loan guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate on such loan to be unreasonable.
- (c) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a guarantee to the lender.

### **Sec. 1300.16 Application process.**

- (a) Applications are to be submitted by the borrower. Borrowers may submit applications to the Board any time after October 11, 2001, through June 28, 2002. All applications must be received by the Board no later than 5 p.m. EDT, June 28, 2002, in the Board's offices. Borrowers should submit an original application and four copies. Applications will not be accepted via facsimile machine transmission or electronic mail. No application will be accepted for review if it is not received by the Board on or before June 28, 2002.
- (b) Applications shall contain the following:
  - (1) A completed Form "Application for Air Carrier Guaranteed Loan";
  - (2) 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;
  - (3) 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;
  - (4) 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;

- (5) A statement that the borrower is not under bankruptcy protection or receivership when the application is submitted, unless the guarantee and the underlying financial obligation is to be part of a bankruptcy court-certified reorganization plan;
- (6) Consolidated financial statements of the borrower for the previous five years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;
- (7) 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;
- (8) 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;
  - 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.

[The collections of information in this section and elsewhere in this part that are subject to the Paperwork Reduction Act 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.]

**Sec. 1300.17 Application evaluation.**

- (a) Eligibility screening. Applications will be reviewed to determine whether the lender and borrower are eligible, the information required under section 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 section 1300.10 of these rules, 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.
  - (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.
    - 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 these rules;
  - (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;
  - (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 section 1300.18.

**Sec. 1300.18 Issuance of the Guarantee.**

- (a) The Board's decisions to approve any application for a guarantee under section 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.

**Sec. 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.

**Sec. 1300.20 Lender responsibilities.**

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

**Sec. 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.

**Sec. 1300.22 Termination of obligations.**

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

**Sec. 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.
- (b) The following categories of entities may purchase participations in loans guaranteed under the program:
- (1) Eligible lenders;
  - (2) Private investment funds and insurance companies that do not usually invest in commercial loans;
  - (3) Air Carrier company suppliers or customers, who are interested in participating as a means of commencing or solidifying the supplier or customer relationship with the borrower; or
  - (4) Any other entity approved by the Board on a case-by-case basis.