

(iii) There are no limitations on the number of frequencies that may be trunked. Authorizations for non-SMR stations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in §§ 90.615, 90.617, and 90.619.

(2) For conventional systems the assignment of frequencies will be made in accordance with applicable loading criteria. Accordingly, depending upon the number of mobile units to be served, an applicant may either be required to share a channel, or, if an applicant shows a sufficient number of mobile units to warrant the assignment of one or more channels for its exclusive use, it may be licensed to use such channel or channels on an unshared basis in the area of operation specified in its application.

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617, or 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

\* \* \* \* \*

## PART 95—PERSONAL RADIO SERVICES

■ 14. The authority citation for part 95 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 15. Section 95.1101 is revised to read as follows:

### § 95.1101 Scope.

This subpart sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz frequency bands. See § 95.630 regarding permissible frequencies.

■ 16. Section 95.1103 is amended by revising paragraph (c) to read as follows:

### § 95.1103 Definitions.

\* \* \* \* \*

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614, 1395–1400 MHz and 1427–1432 MHz frequency bands.

■ 17. Section 95.1111 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

### § 95.1111 Frequency coordination.

(a) Prior to operation, authorized health care providers who desire to use wireless medical telemetry devices must

register all devices with a designated frequency coordinator. Except as specified in § 95.1105, operation of WMTS equipment prior to registration is not authorized under this part. The registration must include the following information:

\* \* \* \* \*

(c) As of April 14, 2010, no registrations may be accepted for frequencies where WMTS does not have primary status. Previously registered secondary facilities may continue to operate as registered.

■ 18. Section 95.1115 is amended by revising paragraphs (a)(2) and (d)(1) as follows:

### § 95.1115 General technical requirements.

(a) \* \* \*

(2) In the 1395–1400 MHz and 1427–1432 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1MHz measurement bandwidth.

\* \* \* \* \*

(d) \* \* \*

(1) In the 1395–1400 MHz and 1427–1432 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

\* \* \* \* \*

■ 19. Section 95.1121 is revised to read as follows:

### § 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 and 1427–1432 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1432 MHz bands. The locations of government systems in these bands are specified in footnotes US351 and US352 of § 2.106 of this chapter.

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 22

[Docket No OST-2008-0236]

RIN 2105-AD50

### Short-Term Lending Program (STLP)

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule governs the Short Term Lending Program (STLP), which provides financial assistance in the form of guarantees of short-term revolving lines of credit from Participating Lenders (PLs) to disadvantaged Business Enterprises (DBEs) and other certified small and disadvantaged business (SDBs) in connection with transportation-related contracts at the local, state and federal levels. The program is administered through cooperative agreements between DOT's Office of Small and Disadvantaged Business Enterprise (OSDBU) and Participating Lenders and under the STLP's governing policies and procedures.

**DATES:** This rule is effective May 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Nancy Strine, Financial Assistance Division Manager, U.S Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Room W56-497, Washington, DC 20590. Telephone: (800) 532-1169 or e-mail: [Nancy.Strine@dot.gov](mailto:Nancy.Strine@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

On August 21, 2008, the Office of Small and Disadvantaged Business Utilization (OSDBU) of the Office of the Secretary (OST) of the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) in Docket OST-2008-0236 proposing to adopt regulations governing its Short Term Lending Program (STLP) and published the NPRM in the **Federal Register**. See "Department of Transportation, Office of the Secretary, 49 CFR part 22 [Docket NO: OST-2008-0236], RIN 2105-AD50, 73 FR 49386 *et seq.* (August 21, 2008)." In the NPRM, we announced that we were considering regulations to replace the internal policies and guidelines that had for years been used to manage the STLP.

As noted in the NPRM, the Secretary of Transportation has delegated the authority to carry out the functions in

section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 940-210, as amended) known as the Minority Business Resource Center Program, which includes a guaranteed loan program, to the Director of DOT's OSDBU. 49 U.S.C. 332 authorizes DOT's OSDBU to establish, under the Minority Business Resource Center, programs that would assist disadvantaged business enterprises (DBEs) and small disadvantaged businesses (SDBs) in acquiring access to working capital and to debt financing, in order to obtain transportation-related contracts wholly or partially funded by DOT. To implement this authority, OSDBU developed its Short Term Lending Program (STLP) which offers DBE's and other certified small and disadvantaged businesses short term working capital loans at variable interest rates to perform on these transportation-related contracts.

Initially developed in 1989 as a direct loan program, the STLP was converted in 2001 to a loan guarantee program under which private sector Participating Lenders offer loans with a government guarantee of up to 75 percent for qualified applicants.

These loans are revolving lines of credit that provide working capital funds to assist the borrower in financing the direct labor and material costs of completing transportation contracts. The contracts that are funded are assigned to the loan as collateral, and the Participating Lender advances monies up to 85% of eligible and approved Accounts Receivable that arise from the Assigned Contract(s). The contracts must be transportation-related and receive at least one dollar of DOT funding. Repayment comes in the form of a two-party check to the borrower and to the PL directly from the contract proceeds. The total length of time that an eligible borrower may remain in the program cannot exceed a total of five years.

DOT monitors these loans, which require contract assignments and direct joint payee check remittances for principal repayment, through its relationship with the transportation agencies and recipients that receive DOT funds and the Participating Lenders. In recent years the total funds available for full principal amount of loans under the STLP has been limited to \$18,367,000 per fiscal year.

We pointed out in the NPRM that the STLP has undergone an extensive program review to improve its business processes and achieve operational and financial efficiencies and that, as part of this effort, we were asking for comments

on proposed regulations to replace the internal policies and guidelines that were being used to manage the program. We received no comments in response to the NPRM.

We have determined to adopt the rule as proposed, with one minor exception. In the NPRM, we proposed to include as part of the rule copies of the actual forms to be used by DBEs and Participating Lenders for various aspects of the STLP, such as Loan Activation, Loan Extension, Loan Close-out, and various certifications required for loan applications. Because those forms may be amended and in order to make up-to-date forms more easily accessible to DBEs and Participating Lenders, we have determined that it would be in the public interest to make those forms available through the OSDBU Web site instead of including them with the rule itself. Accordingly, changes to the final rule have been made to accomplish this objective, including providing the appropriate Web site address for each form.

#### *Section-by-Section Analysis*

The proposed regulations utilize objective, plain language in an attempt to make the regulations more understandable to Participating Lenders, DBEs and other small and disadvantaged businesses.

**§ 22.1 Purpose:** The purpose of the DOT OSDBU STLP is to provide financial assistance, in the form of a short-term loan from Participating Lenders that is guaranteed by DOT OSDBU, to DBE's and other certified small businesses for the execution of DOT funded and supported transportation-related contracts.

**§ 22.3 Definitions:** This section contains definitions of common banking and lending terminology included in STLP documents and the STLP Policy and Procedure Manual.

**§ 22.11 Eligibility Criteria:** Paragraph (a) defines those requirements needed in order to qualify for a STLP loan. Paragraph (b) clarifies what instrument qualifies as a "transportation-related contract," and paragraph (c) explains the maximum length of time in which a qualified business may remain as an STLP borrower, as well as what circumstances and documentation are required on an annual basis in order to remain eligible.

**§ 22.13 Loan Terms and Conditions:** Section 22.13 describes the parameters of the Short Term Lending Program, including: maximum loan amount, interest rates, the term and structure of the loan, source of funds for loan repayment, allowable uses of the loan proceeds, how loan disbursements are

made, as well as any personal guarantees, collateral or insurance.

**§ 22.15 Delinquency on Federal, State, or Municipality Debt:** This section provides that the borrower must be current on all federal, state, and local taxes to be able to participate in the program.

**§ 22.17 Compliance with Child Support Obligations:** STLP applicants must submit a certification that he or she is not more than 60 days delinquent in child support payments. The Office of Management and Budget (OMB) Circular No. A-129, Revised (Policies for Federal Credit Programs and Non-Tax Receivables) prohibits individuals that are delinquent in child support obligations from eligibility for Federal financial assistance.

**§ 22.19 Credit Criteria:** Section 22.19 describes the required creditworthiness of an STLP applicant, and lists those aspects of creditworthiness that OSDBU will consider in its evaluation of an STLP application.

**§ 22.21 Participation Criteria:** Section 22.21 describes the criteria for banks in order to qualify as STLP Participating Lenders, including certifications, documentation, history of community involvement, loan experience, and the ability to implement, monitor and manage this loan program.

**§ 22.23 Agreement:** Section 22.23 describes the Cooperative Agreement that is executed between DOT and the Participating Lender that defines the relationship between the two, as well as the responsibilities and obligations of each party with regard to the STLP.

**§ 22.25 Lender Deliverables and Delivery Schedule:** This section describes the obligation of the Participating Lenders to adhere to established deadlines for actions, such as the submission of periodic reports and site visits.

**§ 22.27 Eligible Reimbursements to Participating Lenders:** Section 22.27 describes the fees and expenses for which Participating Lenders are eligible to be reimbursed.

**§ 22.29 DOT Access to Participating Lenders' Files:** Section 22.29 describes the policy that governs DOT access to Participating Lenders' records and files.

**§ 22.31 Suspension or Revocation of Eligibility to Participate:** This section describes the circumstances under which the STLP eligibility of a Participating Lender may be suspended or revoked, and the notification procedure for such an action.

**§ 22.33 Termination of Participation in STLP:** Section 22.33 explains the situations under which the cooperative agreement between DOT OSDBU and

the Participating Lender may be terminated, by either party, and the notification procedure for such action.

**§ 22.41 Application Procedures:** Describes the complete STLP application process, the supporting documentation that must accompany the STLP application, and the submission process of the application to the Participating Lender.

**§ 22.43 Approval or Denial:** Section 22.43 describes what will occur when an application is approved or denied, and the method of notification.

**§ 22.45 Allowable Fees to Borrowers:** This section describes those fees that a Participating Lender may collect from the borrower.

**§ 22.51 Loan Closing:** Section 22.51 discusses the process that the Participating Lender must follow to close and execute an STLP loan to a recipient.

**§ 22.53 Loan Monitoring and Servicing Requirements:** Section 22.53 describes what is required of the Participating Lender insofar as the monitoring and servicing of an STLP loan.

**§ 22.57 Loan Reporting Requirements:** Section 22.57 clarifies that the STLP loan is subject to the Federal Credit Reform Act of 1990, and describes those reporting requirements that a Participating Lender must undertake to keep DOT OSDBU informed of the borrower's compliance with the terms of the STLP loan.

**§ 22.59 Loan Modifications:** Describes the procedure that the Participating Lender must follow for any proposed modifications of the terms of the guarantee agreement between DOT OSDBU and the Participating Lender.

**§ 22.61 Loan Guarantee Extensions:** Section 22.61 describes the process under which an extension of the loan guarantee may be requested and granted.

**§ 22.63 Loan Close Outs:** Section 22.63 describes the process for closing out an STLP loan in DOT's records that has been fully repaid.

**§ 22.65 Subordination:** Section 22.65 describes the parameters of a subordination of the line of credit in which the debt guarantee of DOT OSDBU has priority over any other debt of the borrower.

**§ 22.67 Delinquent Loans and Loan Defaults:** This section describes the notification procedure that a Participating Lender must undertake whenever an STLP loan is delinquent. This section also indicates the possible collection or litigation processes that are available in the event of loan delinquency or default.

**§ 22.69 Claim Process:** Section 22.69 describes the action that the Participating Lender may take once all means for the collection of a delinquent debt have been exhausted.

## Regulatory Analyses and Notices

### A. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order, as it does not have an annual effect on the economy of \$100 million or more, nor affect the economy adversely; does not interfere or cause a serious inconsistency with any action or plan of another agency; does not materially alter the impact of entitlements, grants, user fees or loan programs; and does raise novel legal or policy issues. The rule is essentially a streamlining of the provisions for implementing an existing program, and it will not create additional burdens on program participants.

### B. Executive Order 12372 (Intergovernmental Review)

The STLP is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development, as the STLP program facilitates the participation of small and disadvantaged businesses in fully or partially federally funded local and state transportation projects.

### C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), I certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule will not place burdens on small entities. Rather, the rule is intended to provide benefits to small entities by providing a loan guarantee for DBEs and SDBs who require financial assistance to perform on transportation-related contracts.

### D. Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this proposed rule under the Order and have determined that it does not have implications for federalism, as the loan program creates relationships and obligations between a borrower (usually a sub-contractor), a prime contractor, a Participating Lender and DOT/OSDBU only.

### E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST OSDBU may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST OSDBU intends to obtain current OMB control numbers for the new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** as part of NPRM [73 FR 49386] and the Department invited interested persons to submit comments on any aspect of these ICRs, including: (1) Whether the proposed collection is necessary for the OSDBU's performance; (2) the accuracy of the estimated burdens; (3) ways for OSDBU to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

For each of these information collections, the title, a description of the entity to which it applies, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below.

It is estimated that the total burden hours for 100 Participating Lenders to qualify as such, monitor loans, comply with monthly reporting and retain loan records to be approximately 8,000 hours per year. It is estimated that the total burden hours for 100 borrowers to complete the STLP application, with supporting documentation, loan renewals and the submission of the same, to be approximately 2,700 hours.

*Title: Short Term Lending Program—Participating Lenders—Qualifying Criteria.*

*Background:* OSDBU's Short Term Lending Program (STLP) offers certified Disadvantaged Business Enterprises (DBEs) and other Certified Small Businesses (8a, women-owned, small disadvantaged, HubZone, veteran-owned, and service-disabled veteran-owned) the opportunity to obtain short-term working capital at prime interest rates for transportation-related projects. The STLP provides up to a 75% guaranteed revolving line of credit for a maximum of \$750,000 to finance accounts receivable arising from transportation-related contracts. The primary collateral consists of the proceeds of the transportation-related contracts. These loans are provided through banks that serve as STLP Participating Lenders (PL).

#### Participating Lender Qualifying Criteria

As a requirement for approval as a Participating Lender, banks must submit documentation that demonstrates:

(A) Their philosophy and history of lending to small and disadvantaged businesses in their communities. As part of their submission, the bank must show these efforts in relationship to its overall lending portfolio.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 3 hours.

*Estimated Total Annual Burden Hours:* 300 hours.

(B) Their 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.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 50 hours.

(C) 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.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 50 hours.

(D) At least a satisfactory or better Community Reinvestment Act (CRA) rating.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(E) 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).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(F) That it is not currently debarred or suspended from participation in a government contract or delinquent on a government debt by submitting 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](http://www.osdbu.dot.gov/financial/docs/Cert_Debarment_DOT_F_2309-1.pdf).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(G) That it is a drug-free workplace by executing a 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](http://www.osdbu.dot.gov/financial/docs/Cert_Drug-Free_DOT_F_2307-1.pdf).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(H) 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](http://www.osdbu.dot.gov/financial/docs/Cert_Lobbying_DOT_F_2308-1.pdf).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

#### Participating Lender Record Retention

A Participating Lender must allow the authorized representatives of 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 OSDBU guaranteed loans. The PL shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of its Cooperative Agreement with OSDBU for a period of not less than three years from the date of termination of the Cooperative Agreement or payment in full from the borrower; except in cases where litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

*Respondents:* 100.

*Frequency:* Annually.

*Estimated Average Burden per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 50 hours.

#### Participating Lender 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. The Participating Lender must undertake processes to activate, monitor, service, and close out STLP loans. To fulfill the requirements of FCRA, the Participating Lender must submit regular reports and required documentation to OSDBU on these processes.

(A) *Loan Activation:* 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](http://www.osdbu.dot.gov/financial/docs/Loan_Activation_DOT_F_2303-1.pdf).

*Respondents:* 100.

*Frequency:* Annually, up to five years.

*Estimated Average Burden per*

*Response:* ½ hour.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

(B) *Loan Close-out:* 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](http://www.osdbu.dot.gov/financial/docs/Loan_Close-Out_DOT_F_2304-1.pdf).

*Respondents:* 100.

*Frequency:* Annually.

*Estimated Average Burden per*

*Response:* ½ hour.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

(C) *Monthly Reporting Requirement:* The Participating Lender must submit each month to OSDBU form DOT F 2306–1 Pending Loan Status Report and form DOT F 2305–1 Guaranty Loan Status Report detailing the previous month's activity for their STLP loans. These forms are available at [http://www.osdbu.dot.gov/financial/docs/Pending\\_Loan\\_DOT\\_F\\_2306-1.xls](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](http://www.osdbu.dot.gov/financial/docs/Guaranty_Loan_DOT_F_2305-1.xls) respectively.

*Respondents:* 100.

*Frequency:* Monthly.

*Estimated Average Burden per*

*Response:* 1 hour.

*Estimated Total Annual Burden*

*Hours:* 1,200 hours.

(D) *Call Reports or Thrift Financial Reports:* Participating Lenders shall provide two copies of their quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council—FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision—OTS Form 1313) within 60 days after the close of each calendar quarter.

*Respondents:* 100.

*Frequency:* Quarterly.

*Estimated Average Burden per*

*Response:* 15 minutes.

*Estimated Total Annual Burden*

*Hours:* 100 hours.

(E) *Credit verification:* The Participating Lender's internal credit approval memo, credit analysis, and any other third-party credit verifications obtained to the process the loan application must accompany their internally-approved loan package submission to OSDBU.

*Respondents:* 100.

*Frequency:* For each loan submitted (minimum 1, approximate maximum 5).

*Estimated Average Burden per*

*Response:* 12 hours.

*Estimated Total Annual Burden*

*Hours:* (1,200, 6,000).

(F) *Loan Guarantee Extension:* 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](http://www.osdbu.dot.gov/financial/docs/Loan_Extension_DOT_F_2310-1.pdf).

*Respondents:* 100.

*Frequency:* Annually.

*Estimated Average Burden per*

*Response:* ½ hour.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

Loan Application Process—Loan Renewal

A current STLP participant may submit a guaranteed loan renewal application package, comprised of an updated loan application, with supporting documentation.

(A) *Updated loan application form.* The application may be obtained directly from 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>.

*Respondents:* 100.

*Frequency:* Annually, up to five years.

*Estimated Average Burden per*

*Response:* 8 hours.

*Estimated Total Annual Burden*

*Hours:* 800 hours.

(B) *Application supporting documentation.* Supporting documentation may include, but is not limited to, the following items:

a. Current job performance reference letter (within the past 12 months);

b. Evidence of current DBE and/or other eligible certification;

c. Business tax returns for the most recent fiscal year;

d. Business financial statements for the most recent fiscal year;

e. If the business' last fiscal year has ended longer than 90 days at the time of application, then applicant must submit interim business financial statements to include balance sheet, P&L and updated aging reports of both receivables and payables;

f. Current work in progress schedule or statement;

g. Personal income tax returns;

h. Personal financial statements;

i. Signed and dated copy of transportation-related contracts to be used as collateral;

j. Updated cash flow projections;

*Respondents:* 100.

*Frequency:* Annually, up to five years.

*Estimated Average Burden per*

*Response:* 4 hours.

*Estimated Total Annual Burden*

*Hours:* 400 hours.

New Loan Application Process

A potential STLP participant must submit a guaranteed loan application package, comprised of a loan application, with supporting documentation.

(A) *Completed loan application form.*

The application may be obtained directly from 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>.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per*

*Response:* 2 hours.

*Estimated Total Annual Burden*

*Hours:* 200 hours.

(B) New loan application supporting documentation may include, but is not limited to, the following items:

a. Business, trade or job performance reference letters;

b. DBE or other eligible certification letters;

c. Signed and dated borrower certification that all federal, state and local taxes are current;

d. Business tax returns;

e. Business financial statements;

f. Personal income tax returns;

g. Personal financial statements;

h. Schedule of work in progress;

i. Signed and dated copy of transportation-related contracts to be used as collateral;

j. Business debt schedule;

k. Income and cash flow projections;

l. Evidence of bonding and insurance.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per*

*Response:* 12 hours.

*Estimated Total Annual Burden*

*Hours:* 1,200 hours.

(C) *Loan package submission:*

Application packages are submitted directly to a Participating Lender in the applicant's geographic area. The list of Participating Lenders is available on the OSDBU Web site: <http://osdbu.dot.gov/Default.aspx?tabid=72>. In the event that there is no Participating Lender in the applicant's geographic area, the loan application package may be sent directly to OSDBU at 400 Seventh Street, SW., Room 9414, S–40, Attention STLP, Washington, DC 20590.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 100 hours.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued this 25th day of March 2010, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

## List of Subjects in 49 CFR Part 22

Loan programs—Business and industry, Programs, Small business, Transportation, Commerce.

■ For the reasons set forth in this preamble, the Department is adding 49 CFR part 22 as follows:

### PART 22—SHORT-TERM LENDING PROGRAM (STLP)

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22.3 Definitions.

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**Authority:** 49 U.S.C. 332.

#### 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 cooperative 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 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 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 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
- (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](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](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](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](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 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.

**§ 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 or 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](http://www.osdbu.dot.gov/financial/docs/Loan_Guarantee_DOT_F_2314-1.pdf).

#### **§ 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 material 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](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](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](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](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](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](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 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.

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