

Air Trans. System Stabilization

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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.

§ 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 ac-

ceptable to the Board or by the Comptroller General;

(5) In conducting audits and reviews pursuant to paragraphs (a) (3) and (4) of this section, 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.

§ 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.

§ 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.

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(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.

§ 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.

§ 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.

§ 1300.16 Application process.

(a) Applications are to be submitted by the borrower. Borrowers may submit applications to the Board any time after October 12, 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

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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