

as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interest of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to the value of goods or services covered by a facility payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §1493.270 and §1493.280 excluding post-export adjustments (i.e., corrections of evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in §1493.300.

#### § 1493.320 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank or any other source

whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a facility payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the facility payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 days from the date of recovery or 15 days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the facility payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a facility payment

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guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix to §1493.320 provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the facility payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the facility payment guarantee or for fulfilling obligations under the FGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter's assignee engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §1493.270 or the failure of an exporter to comply with the provisions of §1493.290 or §1493.330(e) will not affect the validity of any facility payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the facility payment guarantee or at the time of assignment of the facility payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank or the importer.

APPENDIX TO §1493.320—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in §1493.320, regarding pro rata sharing of recoveries made for claims filed under the FGP. For the purpose of this example only, even though CCC interest coverage is on a floating rate basis, a constant rate of interest is assumed. A typical case might be as follows:

1. The U.S. bank enters into a \$300,000 three-year credit arrangement for the export sale of goods and services with the foreign

bank calling for equal semi-annual payments of principal and semi-annual payment of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. Exported value reported to CCC equals \$300,000.

3. The foreign bank fails to make the final principal payment of \$50,000 and an interest payment of \$2,493.15, both due on January 31.

4. On February 10, the U.S. bank files a notice of default and claim in good order with CCC.

5. CCC's guarantee states that CCC's maximum liability is limited to 95 percent of the principal amount due (\$47,500) and interest at a rate of 8 percent per annum (basis 365 days) on 95 percent of the principal (\$1,894.80).

6. CCC pays the claim on February 22.

7. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the facility payment guarantee would be computed as follows:

1. CCC's Obligation under the Facility Payment Guarantee:	
(a) Principal coverage—(95% × \$50,000) .....	\$47,500.00
(b) Interest coverage—(8% × \$47,500 × 182/365) .....	1,894.80
Total .....	49,394.80
(c) Late interest due from CCC (7% per annum for 11 days × \$49,394.80) .....	104.20
(d) Amount paid by CCC on February 22 .....	49,499.00
2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:	
(a) Principal due January 31 .....	50,000.00
Interest due January 31 (10% × \$ 50,000 × 182/365) .....	2,493.15
Amount owed by foreign bank as of January 31 ...	52,493.15
(b) Penalty interest due (12% per annum for 22 days × \$ 50,000) .....	361.64
(c) Amount owed by foreign bank as of February 22 .....	52,854.79
3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: .....	
	3,355.79.

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### COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is \$52,854.79, CCC would be entitled to 93.65 percent (\$49,499.00 divided by \$52,854.79) and the holder of the facility payment guarantee would be entitled to 6.35 percent (\$3,355.79 divided by \$52,854.79) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, §1493.320(b) would apply.

### § 1493.330 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a facility payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the facility payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment. Any assignment may be made to one party as agent or trustee for two or more parties participating in the assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof to such financial institution and to the exporter issued the facility payment guarantee in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a facility pay-

ment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a facility payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a facility payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative satisfaction of facility payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the facility payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms or conditions for the satisfaction of CCC's obligations under a facility payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the facility payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a facility payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales