

necessity of securing the Board's prior written approval; or

(2) An action or agreement by the Lender which has the effect of distributing the risks of the credit among other Lenders if:

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

(ii) Both the unguaranteed and guaranteed portions of the loan are treated in the same manner;

(iii) The Lender remains solely responsible for the administration of the loan; and

(iv) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected; or

(3) Transfer by a non-Agent Lender of the non-guaranteed portion of the loan after payment under the Guarantee has been made.

[64 FR 57947, Oct. 27, 1999, as amended at 65 FR 24107, Apr. 25, 2000]

§ 500.211 Lender responsibilities.

(a) *General.* Lender shall comply with all provisions of the Guarantee.

(b) *Standard of care.* The Lender shall exercise due care and diligence in administering the loan as would be exercised by a reasonable and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board.* In addition to any other representations required by the Guarantee, the Applicant shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Applicant's rights and pursue its remedies, including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation, approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its

sole discretion and pursuant to the Guarantee, elects to provide same.

(d) *Covenants.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall require the Loan Documents to contain such affirmative and negative covenants by the Borrower as are required by the terms and conditions of the Guarantee, such as the prohibition on the payment of dividends.

(e) *Monitoring.* In accordance with the Guarantee the Lender shall monitor Borrower's performance under the Loan Documents to detect any non-compliance by the Borrower with any provision thereof.

(f) *Reporting.* With respect to any loan guaranteed by the Board pursuant to the Act and this part the Lender shall provide the Board with the following information, in accordance with the Guarantee:

(1) Financial statements for the borrower, as provided in the Guarantee;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan; and

(3) A completed signed copy of Form "Quarterly Compliance Statement" that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) *Notices.* All written notices, requests, or demands made to the Board shall be mailed to the Board at the U.S. Department of Commerce, H2500, Washington, DC 20230, except as otherwise specified by the Guarantee or as directed by the Board. Lender shall notify the Board in writing without delay of:

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 5 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or Guarantee promptly, but not later than 5 business days, of the Lender's learning of such occurrence; and

(3) Any other notification requirements as provided by law, or by the

§ 500.212

terms of the Guarantee or Loan Documents.

[64 FR 57947, Oct. 27, 1999, as amended at 65 FR 24107, Apr. 25, 2000; 65 FR 51522, Aug. 24, 2000]

§ 500.212 Liquidation.

(a) The Board may take, or direct to be taken, any action in liquidating the Security which the Board determines to be necessary or proper, consistent with Federal law and regulations.

(b) Pursuant to the Guarantee, upon written demand by the Lender and whether or not the Board has made any payment under the Guarantee, the Board, at the Board's sole option shall have the right to require that the Lender, solely or jointly with the Board, conduct to completion the liquidation of any or all of the Security. The Board may choose to conduct the liquidation itself.

§ 500.213 Termination of obligations.

(a) The Board, in its discretion, shall be entitled to terminate all, or a portion, of the Board's obligations under the Guarantee, without further cause, in the event that:

(1) The Guarantee fee required by § 500.208(d) shall not have been paid;

(2) A Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the

13 CFR Ch. V (1-1-07 Edition)

modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(3) A Lender has released the Board from its liability and obligations under the Guarantee;

(4) A Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents;

(5) A Lender fails to make a demand for payment within 30 days of payment default; or

(6) A Lender fails to comply with any material provision of the Loan Documents or the Guarantee.

(b) Upon receipt of a written demand for payment made pursuant to the Guarantee, the Board shall be entitled to seek such certifications from the Lender, undertake such audits or investigations, or take such other action as is provided for by law or the Guarantee so as to determine whether the Lender has complied with all of the Lender's obligations under the Guarantee.

[64 FR 57947, Oct. 27, 1999, as amended at 65 FR 24107, Apr. 25, 2000]

§ 500.214 OMB control number. [Reserved]