

§ 2201.19

7 CFR Ch. XX (1-1-08 Edition)

(d) *Protection of United States Financial Interests.* The Board may not approve the Guarantee of a Loan unless:

(1) The Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to review of the Loan by the Board for purposes of the Act; and

(2) The Board makes a determination in writing that:

(i) To the best of its knowledge upon due inquiry, the Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) The value of Collateral provided by an Applicant is at least equal to the unpaid balance of the Loan amount; and if the value of Collateral provided by an Applicant is less than the Loan amount, additional required Collateral is provided by the Applicant or an Affiliate designated by the Applicant and acceptable to the Board;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been received for the Loan and the Project under the Loan;

(v) The Loan would not be available on reasonable terms and conditions without a Guarantee under the Act; and

(vi) Repayment of the Loan can be reasonably expected.

(e) *Non approvals.* A Guarantee will not be approved if it is determined that:

(1) The Applicant's proposal does not indicate financial feasibility, or the Collateral is determined to not adequately secure the Loan;

(2) The Applicant's proposal indicates technical flaws, which, in the opinion of the Board, would prevent successful implementation, or operation of the Project;

(3) Any other aspect of the Applicant's proposal fails to adequately address any requirements of the Act or the regulations in this part or contains inadequacies which would, in the opin-

ion of the Board, undermine the ability of the Project to meet the general purpose of the Act or comply with requirements in this part; or

(4) Proceeds for the Loan will be used for any of the ineligible purposes set forth in §2201.15.

(f) *Impact on Competition.* A Loan shall not be guaranteed unless the proposed Project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to Local Television Broadcast Signals in a Non-served Area or Underserved Area and is commercially viable.

§ 2201.19 Loan terms.

(a) All Loans guaranteed under the Program shall be due and payable in full no later than the earlier of 25 years from date of the closing of the Loan or the economically useful life of the primary Assets to be used in delivery of the signals concerned, as determined by the Board.

(b) Loans guaranteed under the Program must:

(1) Bear a rate of interest determined by the Board to protect the financial interests of the United States and to be reasonable. This determination will be based on the Board's comparison of the:

(i) Difference, or interest rate spread, between the interest rate on the Loan sought to be guaranteed and the current average yield on outstanding marketable obligations of the United States of comparable maturity; and

(ii) The interest rate spread between the rates on recently issued and similarly rated and structured obligations and the current yields on outstanding marketable obligations of the United States of comparable maturity.

(2) Have terms that, in the judgment of the Board, are consistent in material respects with the terms of similar obligations in the private capital market.

(c) So long as any principal and interest is due and payable on a Loan guaranteed under the Act, a Borrower shall:

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(1) Maintain Assets, equipment, facilities, and operations on a continuing basis;

(2) Not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under the Act;

(3) Remain sufficiently capitalized; and

(4) Submit to and cooperate fully with any audit or Collateral review required by the Board.

§ 2201.20 Collateral.

(a) *Existence of adequate Collateral.* An Applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate Collateral secures a Loan guaranteed under the Program. Prior to approving a Guarantee, the Board shall require that the value of the Collateral pledged be at least equal to the unpaid balance of the Loan Amount.

(b) *Form of Collateral.* Collateral required by paragraph (a) of this section shall consist solely of Assets of the Applicant, any Affiliate of the Applicant, or both, as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan is guaranteed. Such Assets may include, but are not limited to, the following:

(1) Tangible Assets, including current Assets (such as cash, accounts receivable, and inventory), reserve funds, land, buildings, machinery, fixtures, and equipment;

(2) Assignments of all relevant contractual agreements, including contractual rights to certain cash flows, marketing arrangements, third-party guarantees, insurance policies, contractors' bonds, and other agreements or rights that may be of value;

(3) All permits, governmental approvals, franchises and licenses, necessary to carry out and operate the required equipment or service; and

(4) Other Assets, which, in the judgment of the Board, possess Collateral value suitable for securing the Loan, including a pledge of all or part of the Applicant's ownership interest in the Project or company, and any after-acquired property.

(c) *Applicant's compliance findings.* An Applicant's compliance with paragraphs (a) and (b) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the Loan.

(d) *Collateral for entire loan.* The same Collateral shall secure the entire Loan, including both the Guaranteed Portion and the Unguaranteed Portion.

(e) *Review of valuation.* The value of Collateral securing a Loan is subject to review and approval by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate. The Board's evaluation of the proposed Collateral for the Loan will be based on several factors, including but not limited to:

(1) The expected value of the pledged Collateral in the event of defaults with specific consideration given to the residual value of Project Assets to third-parties and the liquidity of such Assets;

(2) The cash flow characteristics of the Project;

(3) The contractual characteristics of the Project to the extent Project-related agreements underpin the Project's estimated cash flows;

(4) The competitiveness of the Project's economics and the associated certainty of cash flows in the future; and

(5) The creditworthiness of any designated Affiliates(s) that provides services to the Applicant or provides any credit support.

(f) *Ongoing Collateral Assessment.* The Board shall require that the value of the Collateral shall be at all times at least equal to the unpaid balance of the Loan Amount. To ensure that the ongoing value of the Collateral is properly maintained, the Board may require the borrower to have an ongoing third-party inspection and valuation of the Collateral that is acceptable to the Board. If the Collateral value at the measurement date is less than the unpaid balance of the Loan Amount, the Borrower or its designated Affiliates(s) will be required to pledge additional acceptable Collateral to cover any deficit.

(g) *Lien on Collateral.* (1) Upon the Board's approval of a Guarantee, the