[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA-2008-0061]

RIN 2130-AB91

Railroad Rehabilitation and Improvement Financing Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: The Transportation Equity Act for the 21st Century of 1998 (TEA-21) established the Rail Rehabilitation and Improvement Financing (RRIF) Program. The program authorizes the Secretary of Transportation to issue direct loans and loan guarantees to state and local governments, railroads, interstate compacts, and other specified organizations to finance the development of railroad infrastructure. The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005: a Legacy for Users (SAFETEA-LU) amended and expanded the program. SAFETEA-LU increased the principal amount of the RRIF program up to $35.0 billion, and of that amount, $7.0 billion is reserved for freight railroads other than Class I carriers. This NPRM proposes amending eligibility and application form and content criteria to ensure the long-term

sustainability of the program, promote competition in the railroad industry, and reduce the risk of default for applicants and the Government.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Comments should reference Docket No. **FRA-2008-0061** and may be submitted the following ways:

- E-Gov Web site: http://www.regulations.gov. This Web site allows the public to enter comments on any Federal Register notice issued by any agency. Follow the instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington DC, 20590-0001.
- Hand Delivery: DOT Docket Management System; West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket ID, **FRA-2008-0061**, at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that FRA received your comments, include a self-addressed stamped

postcard. Internet users may submit comments at http://www.regulations.gov. Note: Comments are posted without changes or edits to http://www.regulations.gov, including any personal information provided. Please see the Privacy Act discussion in the Supplementary Information section of this NPRM.

FOR FURTHER INFORMATION CONTACT: John Kern, Attorney-Advisor, Office of the Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590 (John.Kern@dot.gov or 202-493-6044).

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through http://www.regulations.gov, which is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at http://www.archives.gov/federal_register and the Government Printing Office's Web page at http://www.gpoaccess.gov.

Background

Section 7203 of TEA-21, Pub. L. No. 105-178 (June 9, 1998), established the Railroad Rehabilitation and Improvement Financing (RRIF) Program. This program revised and replaced the pre-existing railroad financing program established under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976. In 2000, the FRA

promulgated a rule implementing the RRIF program (65 FR 41838, July 6, 2000) found in 49 CFR Part 260 ("RRIF Rule"). In 2005, SAFETEA-LU further amended and expanded the RRIF program, establishing additional priorities, increasing the loan principal, and eliminating any requirement for collateral under the program.

The RRIF program authorizes the Secretary to provide direct loans and loan guarantees to state and local governments, interstate compacts consented to by Congress, government-sponsored authorities and corporations, railroads, joint ventures that include one railroad, and limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad. SAFETEA-LU did not amend the types of eligible projects, so they remain the same as under TEA-21: (1) acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities (including tracks, components of tracks, bridges, yards, buildings, and shops); (2) refinancing outstanding debt incurred for these purposes; or (3) development or establishment of new intermodal or railroad facilities. Direct loans and loan guarantees issued under this section cannot be used for railroad operating expenses.

SAFETEA-LU increased the authorized, aggregate unpaid principal amount of obligations under direct loans and loan guarantees from $3.5 billion under TEA-21 to $35.0 billion. Of this amount, SAFETEA-LU increased the amount available solely for projects primarily benefiting freight railroads other than Class I carriers to $7.0 billion. Furthermore, SAFETEA-LU prescribed that the Secretary shall not establish any limit on the proportion of the unused amount authorized that may be used for one loan or loan guarantee.

The Secretary has delegated her authority under the RRIF program to the FRA Administrator. TEA-21 required FRA to give priority consideration to projects that: (1) enhance public safety; (2) enhance the environment; (3) promote economic development; (4) enable United States companies to be more competitive in international markets; (5) are endorsed by plans prepared under 23 U.S.C. 135 by the state or states in which they are located; or (6) preserve or enhance rail or intermodal service to small communities or rural areas. SAFETEA-LU amended these priority considerations to include projects that: (7) enhance service and capacity in the national rail system or (8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

Pursuant to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables, the Federal government must manage the RRIF program to ensure that the goals of the program are met while minimizing the risk of borrower default. The Federal government is responsible for making estimates of the costs of direct loan and loan guarantees. The goal of the RRIF program is to address a perceived gap between the railroad industry's financial needs and the lack of private financial sources willing to provide the necessary long-term, low-capital loans. Additionally, a goal of the program shall be to assist small railroads that lack access to capital and financing for making capital improvements in support of the priority considerations listed section 260.7. The program shall also strive to encourage the private sector to invest in railroads and to provide financing for the types of projects underwritten by the RRIF program. The proposed amendments will further these goals and priorities.

The NPRM proposes to amend the RRIF rule to incorporate a number of program features which FRA believes will improve the administration and effectiveness of the RRIF program. FRA's beliefs are based on its experience gained while administering the RRIF program and its knowledge of the railroad industry, as well as congressional findings and General Accountability Office recommendations, which will be discussed later in the preamble. The NPRM proposes substantive amendments to the existing rule that will ensure the long-term sustainability of the program, promote competition in the railroad industry, and reduce the risk of default for applicants and the Government.

Section-by-Section Discussion of the Proposed Changes

Section 260.21 Eligibility

The NPRM proposes to establish an equity contribution requirement for applicants who are larger than small entities. The FRA believes that by requiring borrowers to invest a certain percentage of non-RRIF funds to finance a project, this will ensure that borrowers are themselves financially invested in the project. Equity contribution requirements are a common practice among financial lenders. The FRA's intent is to reduce the risk of borrower default, and subsequent Government loss, by having an applicant contribute to the assets financed by the loan.

The NPRM proposes that an applicant be required to have and maintain a minimum equity contribution of the total costs of the project being financed by the federal assistance. Furthermore, the FRA proposes to establish a required equity contribution ratio that is a function of the creditworthiness of the applicant, the degree of leverage in the project represented by the amount of federal assistance requested, the size

of the loan as compared with the overall financial resources of the applicant, and whether the applicant is requesting a direct loan or loan guarantee. Finally, the FRA proposes that direct loan and loan guarantee applications for less than $20 million will be exempt from the equity contribution requirement.

Applicants with a low credit rating, which the FRA proposes to define as below "investment grade," represent a riskier investment for the federal government. Applicants requesting a large amount of financial assistance as compared with the overall financial resources of the applicant will also represent a greater risk to the federal government, since more of the federal government's resources will be dependent on the outcome of the project.

Additionally, the Department believes applicants whose debt (including the federal assistance applied for) to equity ratio exceeds 1.0 also pose an increased risk to the federal government since borrowers whose debt exceeds equity generally have an increased risk of default. Finally, direct loans create more risk to the federal government than loan guarantees do, since loan guarantees have the added protection of having an independent financial lender assessing project risk. In cases where applicants and projects create an increased risk to the federal government, applicants will be required to have invested a greater proportion of the total project costs to offset the increased risk to the government.

Direct Loan Applicants

The NPRM proposes that all direct loan applicants with either a credit rating of less than investment grade or whose debt (including the federal financial assistance

applied for) to equity ratio exceeds 1.0 will be required to have and always maintain an equity contribution of at least 20 percent of total project costs for direct loan applications for less than $250 million and an equity contribution of at least 30 percent of total project costs for direct loan applications exceeding $250 million.

The NPRM proposes that all direct loan applicants with a credit rating of no less than investment grade and whose debt, including the federal financial assistance applied for, to equity ratio does not exceed 1.0 will be required to have and to always maintain an equity contribution of at least 10 percent of total project costs for direct loan applications for less than $250 million and an equity contribution of at least 15 percent of total project costs for direct loan applications exceeding $250 million.

Loan Guarantee Applicants

The NPRM proposes that all loan guarantee applicants with either a credit rating of less than investment grade or whose debt, including the federal financial assistance applied for, to equity ratio exceeds 1.0 will be required to have and always maintain an equity contribution of at least 20 percent of total project costs for loan guarantee applications for less than $250 million and an equity contribution of at least 25 percent of total project costs for loan guarantee applications exceeding $250 million. The equity contribution required for applications of direct loans and loan guarantees of less than $250 million is the same because FRA believes that the greater risk presented by direct loans is only necessarily addressed in this program in the context of very large direct loan amounts. Additionally, the type of financial assistance requested is one of many factors that the

FRA used to determine the appropriate level of equity contribution for each financial assistance amount category.

The NPRM proposes that all loan guarantee applicants with a credit rating of no less than investment grade and whose debt, including the federal financial assistance applied for, to equity ratio does not exceed 1.0 will be required to have and to always maintain an equity contribution of at least 10 percent of total project costs for loan guarantee applications for less than $250 million and an equity contribution of at least 12.5 percent of total project costs for loan guarantee applications exceeding $250 million.

The FRA requests comments on the equity contribution requirement and the amounts proposed.

Finally, the NPRM proposes a limitation on the cumulative outstanding balance to a single borrower. The SAFETEA-LU amendments to RRIF state that the Secretary shall not establish "any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee." However, FRA believes that placing a limit on the cumulative amount of direct loans and loan guarantees to any one borrower is within the FRA's authority since the proposed limit is an absolute limit and not based on a proportion of unused funds. 45 U.S.C. 822(d). As Congress could have chosen instead to explicitly prohibit all limitations, regardless of whether or not the limitation is based on the proportion of unused funds, FRA interprets the language as written to indicate that Congress did not intend to prohibit all limitations but only limitations based on the proportion of the unused amount authorized.

In an October 2006 report, the GAO recommended that the Department "consider strategies to sustain the role of competitive market forces by creating a level playing field

for all freight modes."[1] The GAO report found that over the past 30 years, the railroad industry has become more concentrated. The number of Class I railroad systems decreased from 30 railroads in 1976 to 7 railroads in operation today. Of those, four railroads account for over 89% of the industry's revenues.

FRA believes a sufficiently large direct loan or loan guarantee to one borrower could potentially further increase concentration in the railroad industry. A sufficiently large direct loan or loan guarantee to one railroad may have the potential to allow it to obtain a preferential standing in the marketplace over its competitors. The FRA believes that the RRIF program can be an effective means of updating and improving railroad infrastructure to meet modern needs Congress also established that it is a priority of the program to focus on providing capital to smaller railroads by requiring that twenty percent of the program's total funding be set aside for these smaller railroads. Therefore, the FRA believes that limiting the cumulative amount that any one applicant may borrow is proper federal direct loan and loan guarantee policy and would be in keeping with Congressional intent to ensure that a few large projects do not dominate the entire funding for the program.

In order to ensure that the direct loans and loan guarantees are spread evenly throughout the railroad industry, the NPRM proposes limiting the amount of any cumulative outstanding balance to a single borrower. The NPRM proposes $500 million as an appropriate limit for any cumulative loan guarantee and direct loan for any single borrower and seeks comment on the suitability of this figure. In particular, commenters

[1] GAO, *Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed*, GAO-07-94, October 2006

who believe this figure is insufficient for their project needs should comment on whether any greater amount would be more suitable.

Section 260.23 Form and content of application generally

First, if the amount of financial assistance requested exceeds a defined threshold, the NPRM proposes adding a requirement for applicants to obtain a credit rating or assessment that takes into account the proposed project. This will result in better informed decisions by the government and ensure that the credit risk to the Government is minimized for the largest direct loan and loan guarantee requests. The NPRM proposes a threshold of $250 million as an appropriate amount and invites comments on the suitability of this figure.

Second, the NPRM proposes adding a requirement that applicants submit electronic copies of their audited financial statements. This requirement will reduce application review costs and credit risk for the Government and ensure more efficient processing of loan applications. As this requirement may be overly burdensome on small railroad operations, the NPRM proposes excluding applicants with annual revenues of less than $20 million from this requirement, as well as applications for direct loans or loan guarantees for less than $20 million.

Pursuant to its authority under the Small Business Act to define "small entities," FRA published a final statement of agency policy that formally establishes "small entities" as railroads that meet the line-haulage revenue requirements of a Class III railroad. *See* 68 FR 24891 (May 9, 2003), as codified at part 209, appendix C of this chapter. The $20 million limit (adjusted annually for inflation) is based on the Surface

Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR parts 1201). The NPRM proposes to use this definition for this rulemaking.

Third, the NPRM proposes adding a requirement for applicants to identify and quantify the public benefit to be attained by the financial assistance. A GAO report from 2003 discussing the financing limitations of freight transportation recommended the DOT promote the use of benefit analyses, including external benefits.[2] The report found that by evaluating the benefits of competing alternatives, applicants would have to apply systematic analytical methods as part of their investment decision-making process, leading to a better understanding of the tradeoffs among competing alternative solutions. Additionally, by determining clear and tangible benefits, applicants would be better able to garner support for projects from private firms. The proposed rule will reduce the credit risk to the Government by encouraging participation from private financial sources, reduce application review costs, and improve government decision-making through better information. Furthermore, the NPRM proposes giving priority consideration to applications that have the highest benefit to loan value in order make economically efficient use of limited government resources and to further reduce the risk to the Government of default.

Rulemaking Analyses and Notices

Executive Order 12866 and U.S. DOT Regulatory Policies and Procedures

[2] GAO, *Freight Transportation: Strategies Needed to Address Planning and Financing Limitations*, GAO-04-165, December 2003.

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). We have prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rule. FRA invites comments on this regulatory evaluation.

This regulation will affect only those entities that voluntarily elect to apply for a direct loan or loan guarantee and those who receive a direct loan or loan guarantee under the program. It will not impose any direct, involuntary, or un-reimbursed costs on those entities not applying for the program. The only costs imposed on the applicants are the costs associated with completing an application. The costs associated with the proposed rule would also not differ materially from the current applications costs. The proposed rule codifies and regularizes many requirements already in effect. Although we have not provided a detailed cost of the application, many of these costs would be incurred with or without the rule. FRA specifically solicits comment on the total and incremental application costs of this proposed rule.

FRA has also concluded that the railroad rehabilitation and improvement loan program could generate both direct and indirect benefits. By codifying existing application review practices, the proposed rule will result in a more efficient and consistent use of government resources. Additionally, the proposed rule will provide for greater governmental transparency in codifying how applications will be reviewed. Furthermore, applicants will have the benefit of knowing their applications contain all the information necessary for review. The regulatory evaluation contains a more detailed discussion of the costs and benefits of the proposed rule.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth criteria for project applications in the RRIF program, which will result in only minimal additional cost to program applicants. This rule would also not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 601-612) requires a review of rules to assess their impact on small entities. FRA does not expect the proposed rule to have a significant economic impact on a substantial number of small entities. For this proposed rule, the relevant definition of small entities is based on the applicant's annual revenue. The Small Business Administration (SBA) has provided FRA with the authority to establish a definition for small entities. FRA has published a final policy that formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad, which is currently annual operating revenues of $20 million or less. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier.

FRA has not conducted a regulatory flexibility assessment of this proposed rule's impact on small entities. Small entities are largely exempt from the new application and equity contribution requirements in order to avoid a scenario where additional costs imposed could have significant economic impact on a substantial number of small entities. Additionally, FRA notes that this is a voluntary loan program, and the proposed

rule will not have any effect on small entities that do not apply for direct loans or loan guarantees. FRA invites comment on the economic effect of the proposed rule on small entities. However, FRA believes the proposed rule will benefit small entities by providing them with greater access to capital and capital markets. FRA has, therefore, concluded that there are no substantial economic impacts for small entities of government, business, or other organizations.

FRA requests public comments that will clarify what the impacts will be for the affected small entities. FRA especially encourages political subdivisions that may be considered to be small entities to participate in the comment process and submit written comments to the docket.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed

rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector.

This loan program is not an "unfunded mandate." This NPRM will not result in the expenditure by state, local, or tribal governments, in the aggregate, of $132,000,000 (adjusted annually for inflation) or more in any one year, and thus preparation of such a statement is not required.

Executive Order 13132 (Federalism)

The FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This NPRM will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. This NPRM will not have federalism implications that impose any direct compliance costs on state and local governments. There will be minor costs associated with the submission of applications, but they are discretionary and will only be incurred should a state or local government wish to apply for funding. Otherwise, this NPRM directs how Federal funds will go to the states, and thus, there are no federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) addresses the collection of information by the Federal government from individuals, small businesses

and state and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. In accordance with the requirements of the Paperwork Reduction Act, agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. FRA is requesting comment on a proposed information collection. FRA is also giving notice that the proposed collection of information has been submitted to OMB for review and approval.

Section 260.23 of the NPRM contains additional information requirements that would apply to railroads, states or political subdivisions of states that file applications for Federal funding for railroad rehabilitation and improvement projects.

This NPRM proposes to include requirements for applicants for loans and loan guarantees to provide certain information with their application in order to assess their financial health. Specifically, in Sections 260.23(4)(p)-(r), FRA proposes to require: credit ratings or assessments for loan and guarantee applications for more than $250 million; electronic copies of audited financial statements to be submitted with applications from other than small entities for loans or guarantees of more than $20 million; and, that applicants must identify and quantify the public benefit that would accrue from the completion of the proposed project. FRA believes that any burden on applicants from formally incorporating these proposed requirements would be negligible because there are exceptions made for small loan and guarantee amounts as well as for

small entities in general. For all other scenarios, the documentation requested would be required for any sort of financing that an applicant would seek, be it public or private, in order to assess the risk of granting financing. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for FRA to properly perform its functions, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collecting information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (Volume 65, Number 70, Pages 19477-78).

National Environmental Policy Act

The FRA has evaluated this regulation in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.) (NEPA) and related directives (see FRA Policy Statement on Procedures for Considering

Environmental Impacts, 64 Fed.Reg. 28545). FRA has concluded that the issuance of this NPRM, which proposes to amend regulations governing the provisions of loan guarantees and direct loans for railroad rehabilitation and improvement projects, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement.

Executive Order 13211 (Energy Effects)

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355 (May 22, 2001). Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. The FRA has evaluated this NPRM in accordance with Executive Order 13211. The FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of the Executive Order.

List of Subjects in 49 CFR Part 260

Loan programs – Transportation; Railroads.

The Proposed Rule

For the reasons set forth in the preamble, and under the authority of 45 U.S.C. 822, FRA proposes to amend Part 260 of chapter II, subtitle B of title 49, Code of Federal Regulations, as set forth below:

PART 260 – [AMENDED]

1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 821, 822, 823; 49 CFR 1.49.

2. Revise section 260.21 to read as follows:

§ 260.21 Eligibility**.**

(a) The Administrator may make a direct loan to an Applicant, or guarantee the payment of the principal balance and any interest of an obligation of an Applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such direct loan or obligation shall be, or have been, used by the Applicant for the eligible purposes listed in § 260.5(a)(1), (2), and (3).

(b) Except for railroads that are small entities as provided in part 209, appendix C of this chapter and are seeking loans not in excess of $20 million, an Applicant applying for financial assistance must make an equity contribution to the costs of the project being financed, in part, by the federal assistance, based on the creditworthiness of the Applicant and the degree of leverage in the project represented by the federal assistance.

(c) An Applicant for a direct loan that is greater than $20 million but less than $250 million shall have and always maintain an equity contribution of at least 20 percent

of total project costs. An Applicant for a direct loan that is greater than $250 million shall have and always maintain an equity contribution of at least 30 percent of total project costs.

(d) An Applicant for a loan guarantee that is greater than $20 million but less than $250 million shall have and always maintain an equity contribution of at least 20 percent of total project costs. An Applicant for a loan guarantee that is greater than $250 million shall have and always maintain an equity contribution of at least 25 percent of total project costs.

(e) An Applicant for a direct loan or loan guarantee with a credit rating of no less than investment grade and whose debt to equity ratio that does not exceed 1.0, shall be required to have and always maintain an equity contribution of half of the amounts prescribed in paragraphs (c) or (d), respectively.

(f) The cumulative outstanding balance of loans and loan guarantees to a single borrower shall not exceed $500 million.

3. Section 260.23 is amended by adding new paragraphs (p), (q), and (r) to read as follows:

§ 260.23 Form and content of application generally.

* * * * *

(p) A credit rating or assessment if the application for financial assistance is in excess of $250 million.

(q) Electronic copies of their audited financial statements, unless the Applicant has revenues of less than $20 million or the application for financial assistance is less than $20 million.

(r) Identification and quantification of the public benefit to be obtained by the financial assistance requested, including, but not limited to, the priorities listed in 49 U.S.C. 822(c). Priority consideration will be given to those applications that have the highest benefit to loan value, consistent with the provisions of 49 U.S.C. 822.

Issued in Washington, DC on

Joseph H. Boardman
Administrator