

minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed Loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

(b) *Credit risk premium.* (1)

Establishment and approval. The Board may establish and approve the acceptance of credit risk premiums with respect to a Guarantee under this Act in order to offset the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the Guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a Guarantee, and the Board approves such a Guarantee, credit risk premiums shall be accepted from a non-Federal source on behalf of a Borrower.

(2) *Credit risk premium amount.* (i) *General.* The Board shall determine the amount of any credit risk premium to be accepted with respect to a Guarantee on the basis of:

(A) The financial and economic circumstances of the Borrower, including the amount of Collateral offered;

(B) The proposed schedule of Loan disbursements;

(C) The business plans of the Borrower;

(D) Any financial commitment from a broadcast signal provider; and

(E) The concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(ii) *Proportionality.* To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 502(5) of the Federal Credit Reform Act of 1990, of Guarantees, the credit risk premium with respect to each Guarantee shall be reduced proportionately.

(iii) *Payment of premiums.* Credit risk premiums under this paragraph shall be paid to an escrow account established in the Treasury, which shall accrue interest. Such interest shall be retained by the escrow account, subject to paragraph (b)(2)(iv) of this section.

(iv) *Deductions from escrow account.* If a liquidation of the Collateral occurs pursuant to § 2201.33(h), any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid shall be deducted from funds in the escrow account and credited to the Administrator for payment of such shortfall. At such time as all Loans guaranteed under this Program have been repaid or otherwise satisfied in accordance with the Act and the regulations in this part, remaining funds

in the escrow account, if any, shall be refunded, on a pro rata basis, to Borrowers whose Loans guaranteed under the Program were not in Payment Default or Default, or where any Payment Default or Default was cured in accordance with the terms of the Loan Documents.

§ 2201.24 Insurance.

The Borrower of a Loan guaranteed under the Program shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

§ 2201.25 Performance Agreement.

(a) The Borrower of a Loan guaranteed under the Program shall enter into a Performance Agreement with the Administrator with respect to the Local Television Broadcast Signals to be provided through the Project.

(b) The Administrator may assess against and collect from a Borrower a penalty not to exceed 3 times the interest accrued on the Loan during the period of noncompliance if the Borrower fails to meet its stipulated Performance Agreement entered into under paragraph (a) of this section.

§ 2201.26 Lender standard of care.

(a) The Lender or Agent shall exercise due care and diligence in analyzing and administering the Loan as would be exercised by a responsible and prudent Banking Institution when analyzing and administering a secured loan of such Banking Institution's own funds without a Guarantee. Such standards shall also apply to any and all underwriting analysis, approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(b) The Lender or Agent shall have such other obligations and duties to the Board and the Administrator as are set forth in the Act or Loan Documents.

§ 2201.27 Assignment or transfer of Loans.

(a) *Modifications.* The Loan Documents may not be modified, in whole or in part, without the prior written approval of the Board.

(b) *Requirements.* (1) Subject to the provisions of paragraphs (c) and (d) of this section and other provisions of this part, a Lender or Agent may assign or transfer the Loan including the Loan Documents to another Lender that meets the eligibility requirements of § 2201.13 of this part.

(2) Any assignment or transfer of a Loan, or any pledge or other use of a Loan as security, including but not limited to any derivatives transaction,

will require the prior written approval of the Board.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

(d) The Agent must hold an interest in a Loan guaranteed under the Program equal to at least the lesser of \$25 million or fifteen percent of the aggregate amount of the Loan. Of this amount, the Agent must hold an interest in the Unguaranteed Portion of the Loan equal to at least the minimum amount of the Loan required to be held by the Agent under the preceding sentence multiplied by the percentage of the entire Loan that is not guaranteed. A non-Agent Lender must hold an interest in the Unguaranteed Portion of the Loan representing no less than five percent of such Lender's total interest in the Loan; provided, that a non-Agent Lender may transfer its interest in the Unguaranteed Portion after payment of the Guaranteed Portion has been made under the Guarantee.

(e) The Guarantee shall have no force or effect if any part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan. At least five percent of any assignment or transfer interest in a Loan must be unguaranteed to ensure that no part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan.

§ 2201.28 Participation in guaranteed Loans.

(a) Subject to paragraphs (b), (c) and (d) of this section, a Lender may distribute the risk of a portion of a Loan guaranteed under the Program by sale of participations therein if:

(1) Neither the Loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part as a result of the sale of such participations;

(2) The Lender remains solely responsible for the administration of the Loan as an Agent; and

(3) The Board's ability to assert any and all defenses available to it under the law and under the Loan Documents is not adversely affected.

(b) The following categories of entities may purchase participation interests in Loans guaranteed under the Program:

(1) Lenders that meet the eligibility requirements of § 2201.13 of this part;

(2) Qualified institutional buyers as defined in 17 CFR 230.144A (a), known as Rule 144A (a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Any other entity approved by the Board on a case-by-case basis.