

required by the Act. The commenter also stated that this requirement is inconsistent with the “no credit elsewhere test” and that the proposed regulations do not specify what outcome would be required from this opinion letter as a condition to obtaining a Guarantee.

The creditworthiness of an applicant is an important consideration for the Board as it implements this program. At the same time, the Board recognizes the commenter’s concern that the cost of obtaining a credit opinion letter may be a potential barrier for some applicants. Therefore, the Board will raise the minimum amount of a loan for which a credit rating opinion letter is required from \$5 million to \$15 million. Section 2201.11(g)(2) of the final rules has been changed accordingly.

*Environmental Impact and Documentation for Eligibility Determination.* One commenter recommended amending the documentation and other requirements for an applicant to be eligible for a loan guarantee consistently throughout the regulations to provide that the environmental impact assessment and all necessary regulatory approvals, spectrum licenses, and delivery permissions will be required to be finalized prior to the closing of the loan to be guaranteed, but not necessarily at the time of application, as appeared to be required under certain sections of the proposed regulations.

Applications may be submitted, evaluated and conditionally approved prior to finalization of the environmental assessment and completion of the NEPA process however, guaranteed loan funds will not be advanced until the NEPA process is completed. Section 2201.11(i) of the regulations has been amended accordingly. Applications may also be submitted, evaluated and conditionally approved prior to an Applicant obtaining all required regulatory and other approvals, licenses and permissions; however, guaranteed loan funds will not be advanced until they have been obtained. The regulations have been amended to clarify this point as well.

#### *Section 2201.12 Applicant*

One commenter asked that the Board amend the regulations to clearly state what the Board actually requires in order for an applicant to be deemed eligible to receive a loan guarantee and indicate the timing for the Board’s determination on the applicant’s eligibility, as opposed to merely listing in the regulations the information

required to be submitted as part of the application.

The Board’s regulations state both the factors for determining eligibility of an applicant and the information items necessary to be submitted as part of a complete application. A determination that an applicant is eligible does not mean that the applicant will be made an offer of guarantee. Similarly, a complete application presenting an economically viable project cannot receive an offer of guarantee if the party submitting the application is not eligible. Several commenters suggested that the Board amend either the requirement that an applicant show that their loan would not be available on reasonable terms and conditions without a program guarantee or the documentation requested in the application to show that this requirement has been satisfied. *See* Section 2201.12(b)(2)(v) of the proposed rule.

The “not available on reasonable terms and conditions” requirement in the proposed rule is taken directly from the statute, and therefore cannot be eliminated by regulation. *See* Section 1004(d)(3)(v) of the Act. The documentation requirement is similar to that used in other government loan guarantee programs.

#### *Section 2201.15 Ineligible Loan Purposes*

One commenter noted that the regulations do not lay out how the Board, in consultation with the National Telecommunications and Information Administration (NTIA), will make a determination that a project 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 Nonreserved Area or Underserved area \* \* \*.” Another commenter asked that the section be moved to a new location in the regulations in order to underscore the importance of this requirement for Board deliberations on this issue.”

The standard that the Board is to apply in making its determination is clearly stated in the Act, *i.e.*, the project is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in a nonreserved area or underserved area and is commercially viable. Moreover, the Act requires the Board to consult with the NTIA in its determination. Given the wide variety of types of projects, market conditions, and consumer services that may be offered, it would be inappropriate to specify a formula for making this determination in the regulations. Rather, the Board

will make its determination, in accordance with the Act, on a case-by-case basis based on the nature of the project under consideration. A detailed process outlined in the regulations as to how the Board will make this determination is not required by the Act. Because of the importance of this determination, however, the regulations have been amended to move this determination from Section 2201.15(c) to Section 2201.18(f).

#### *Section 2201.17 Submission of Applications*

One group of commenters recommended that the Board amend the regulations to state that each application window will be *at least* 120 days long, and not just *approximately* 120 days long, as was stated in the proposed rule.

Elsewhere in today’s **Federal Register** the Board is publishing a notice announcing that applications for guarantees are being accepted through April 21, 2004; a 120 day period. While the Board believes 120 days is an appropriate period of time for an applicant to submit an application, it does not believe that a slightly shorter period for additional application windows is inappropriate. As such, should the Board decide to open additional application windows, any such window could be shorter than 120 days.

Two commenters recommended that the regulations require that a public notice be put in place so that affected participants in the DMA are aware an application has been filed. The Board expects to give the public notice of the names of those who applied during an application window after the application window has closed. This notice will be published in the **Federal Register**.

#### *Section 2201.18 Application Selection*

Two commenters asked that the Board explain in the regulations how it will meet its statutory requirement to prioritize the service of nonreserved areas over the course of the program; *e.g.*, how will the Board prevent the majority of loan guarantees from being issued to serve underserved areas in the initial application window or windows so that the opportunities to serve nonreserved areas will not be limited in later application windows. Another commenter raised the related issue of how the Board will select applications from the same area if more than one application meets the eligibility requirements.

All applications received during the time period established in the Board’s public notice, published elsewhere in