

today's **Federal Register**, will be reviewed based on the criteria in the statute and these regulations. Included in these criteria is a statutory priority to provide service to nonreserved areas. The Board will extend offers of guarantee to eligible applicants in accordance with such priority standards. However, the Board will apply that priority with regard only to the applications before it. The Board will not withhold funds for potential future applications that may be submitted during a possible additional funding availability period. With respect to applications covering the same geographic area, the Board will again apply the statutory and regulatory approval criteria to its determination as to whether to make an offer of guarantee. The Board may extend an offer of guarantee to more than one applicant seeking to provide service to the same geographic area. However, analysis of the financial feasibility of any particular project proposed by an applicant will necessarily take into account any other applications received by the Board covering the same geographic area. This analysis will include determining whether both Projects can be economically sustainable.

One commenter asked that the Board amend the regulations to facilitate the transition to digital television (DTV) by giving priority to those entities whose business and technical plans include the delivery of all local DTV broadcast stations and the entire 19.4 MBPS digital signal, whether stations are delivering one high-definition signal, several DTV multicast signals, data, or a combination.

The Act specifies the considerations that the Board shall give priority to with respect to the approval of loan guarantees. The transition to DTV is not included within the priorities stated in the Act. If Congress had wanted the Board to give priority to those entities that facilitate the transition to DTV, it could have made that a priority in the Act. The regulations have not been amended to give priority to those entities that facilitate the transition to DTV. However, Section 2201.11(e)(8) of the proposed rule does require the applicant to identify the capacity necessary to digitally broadcast all local television broadcast signals to be provided by the project so that the technical capabilities of the project can be evaluated in light of the ongoing transition to DTV.

One commenter proposed that the Board amend the proposed rule so that an applicant could refer to its entire system, and not merely the assets involved with a proposed project, when

describing how high-speed Internet services will be provided in conjunction with the proposed project.

The Act states that the Board should give additional consideration to *projects* that also provide high-speed Internet service. *See* Section 1004(e)(1)(B) of the Act. The Board, therefore, does not have the flexibility to consider any means outside of the project in question by which an applicant might already provide, or would provide in the future, high-speed Internet service.

Another commenter recommended that the regulations be amended to preserve the statutory requirement that "additional"—not "higher" as the regulations now state—priority is given to projects that provide high-speed Internet service. The Board agrees with this comment and has changed the regulations to reflect this change in Section 2201.18(b)(1).

#### *Section 2201.20 Collateral*

One commenter suggested amending the proposed rule to specifically allow collateral to include certain intangible assets. The definition of collateral in the proposed rule is broad, and does not preclude the use of intangible assets. All collateral, including any intangible assets, will be subject to review and approval by the Board under Section 2201.20(e) of the regulations.

Another commenter recommended amending the regulations to provide that the Board will adjust the value of collateral downward and require an applicant to pledge additional collateral only if the Board makes a finding that such an adjustment is appropriate as a result of fraud or abuse by the applicant or any affiliate of the applicant. Such an amendment cannot be made. The Act requires that collateral having a value equal to the unpaid balance of the loan, secure the loan. The government must be able to evaluate, at all times, the value of the collateral, regardless of fraud or abuse. The Act clearly contemplates that, in the event the value of pledged collateral is not equal to the unpaid balance of the loan, additional collateral securing the loan will be provided either by the applicant or its affiliates.

Another commenter recommended that the regulations be amended to enable the Board to use its discretion to minimize burdensome fees and penalties and the use of credit premiums by providing that: (1) The Administrator will never hold liens on assets securing the loan that are in excess of the unpaid balance of the loan amount covered by the loan guarantee; and (2) credit risk premiums should be required only in the event of an

appropriations shortfall such that the cost of the loan guarantee cannot be covered and that, in such cases, that credit risk premiums will be kept to the lowest practical amount.

With regard to the liens issue, the regulations must preserve discretion for the Board to hold liens in an amount sufficient to protect the taxpayer. With respect to credit risk premiums, Section 2201.23 already permits the Board to use its discretion, with OMB concurrence as to the amount, regarding whether and to what extent credit risk premiums will be charged. Section 2201.23 also states that the Board will reduce the credit risk premium with respect to guarantees proportionately to the extent appropriations of budget authority are sufficient to cover the cost of guarantees, as determined under Section 502(5) of the Federal Credit Reform Act of 1990.

#### *Section 2201.21 Fees*

One commenter stated that the origination fee, if one is charged at all, should be capped at 50 percent of the application fee. A loan guarantee origination fee capped at 50 percent of the application fee would impair the Board's ability to recover its costs. The loan guarantee origination fee will be charged only to those applicants that have been made an offer of guarantee. The application fee, on the other hand, will be charged for all applications. The amount of the application fee is meant to cover Board expenses incurred in reviewing an application, while the loan guarantee origination fee is meant to recoup Board expenses incurred in issuing a guarantee and closing the loan.

To ensure that the loan guarantee origination fee more accurately reflects the administrative costs of issuing the guarantee and closing the loan, the Board has decided to revise the amount of the loan guarantee origination fee. This change is reflected in subsection 2201.21(b) of the final rules. This subsection provides a fee sufficient to cover the Board's administrative costs and requires borrowers to enter into an agreement with the Board regarding payment of the fee once an offer of guarantee has been extended. Such costs will likely include legal, financial analysis and other outside consulting fees as well as other administrative costs incurred by the Board. The language conditions closing the loan on full payment of the fee and makes it clear that a borrower is liable for the administrative costs of the Board regardless of whether the loan closes.