

### Section 2201.25 Performance Agreement

One commenter suggested that the proposed rule be amended to provide that the penalty in subsection 2201.25(b) of the proposed rule for failure to comply with a stipulated performance schedule would not be charged if the applicant in good faith failed to meet the performance schedule.

The Act provides the Board with authority to impose a penalty not to exceed three times the interest due on a guaranteed loan if an applicant fails to meet its stipulated performance schedule.<sup>2</sup> While the Board believes that it is important to retain the flexibility granted to it in the Act to impose the penalty, the Board expects to use its authority very judiciously in order to protect the financial interests of the United States.

Another commenter recommended that in the event a borrower in good faith failed to meet the stipulated performance schedule, the Administrator should provide the borrower with a minimum of 120 days to attempt to cure the failure to perform before the assessment of the penalty.

The issue of a "cure period" is more appropriately addressed in the loan documents. It is anticipated that an appropriate "cure period" provision will be included in the loan documents.

### Section 2201.27 Assignment or Transfer of Loans

One commenter recommended that only modifications of significant material provisions of the Loan Documents should require prior written approval of the Board. The commenter also recommended that Board approval not be required for the transfer of certain participation interests in a Loan (e.g., transfer of interests within a group of participating Lenders).

The requirements and limitations in section 2201.27 of the regulations are needed for the Board to assure compliance with the authorizing statute, which requires, for example, that the Board determine whether or not Lenders are eligible to participate in the Program and take note of any transfer of the guaranteed portion of the loan separate and apart from the unguaranteed portion of a loan ("loan stripping"). Such loan stripping is prohibited under subsection 1005(d) of the Act. The Board's need for this information exists not only at the time the loan is originated, but throughout the repayment period.

### Section 2201.31 Indemnification

One commenter recommended amending the regulations to clarify that only those affiliates that are providing collateral for the loan guarantee will be subject to the statutorily required indemnification requirements. A case-by-case statutorily required determination will be made concerning which affiliates will be required to indemnify the government. It is possible, however, that indemnification will be received from affiliates which are not providing collateral for a guarantee. It is anticipated that appropriate contracts, between the affiliates and the government, evidencing such indemnification obligation, will be obtained.

### Section 2201.33 Defaults

One commenter recommended amending the regulations to state that the failure of a lender to provide all of the required documents to the Board in the event of a default will not void the loan guarantee and that instead only a good faith effort by lender in this regard will be required, which is consistent with current commercial practice.

Subsection 2201.33(c) of the regulations requires the lender to provide certain information, relating to the collection process, to the Board within 90 days of the date of a payment demand. Paragraph (f) of that section provides that the Board may withhold payment under the guarantee if such information has not been provided. This provision is reasonable in light of the Board's reliance on the lender in the loan collection process.

### List of Subjects in 7 CFR Parts 2200 and 2201

Loan programs—Communications, Rural areas, Telecommunications, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, chapter XX of title 7 of the Code of Federal Regulations is amended as follows:

### PART 2200—ACCESS TO LOCAL TELEVISION SIGNALS GUARANTEED LOAN PROGRAM; GENERAL POLICIES AND PROCEDURES

■ 1. The authority citation for part 2200 continues to read as follows:

**Authority:** 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L. 107–171.

■ 2. The title of part 2200 is revised to read as set out above.

■ 3. Section 2200.1 is amended by adding a new paragraph (d) to read as follows:

### § 2200.1 Definitions.

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(d) *Person* means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company or partnership, trust, unincorporated organization, government entity, agency or instrumentality or any subdivision thereof.

■ 4. Part 2200 is amended by adding §§ 2200.10 through 2200.12 to read as follows:

### § 2200.10 Restrictions on lobbying.

(a) No funds received through a Loan guaranteed under this Program in this chapter may be expended by the recipient of a Federal contract, grant, loan, loan guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form-LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form-LLL), if required, with each submission that initiates agency consideration of such person for:

<sup>2</sup> See Section 1005(f)(2) of the Act.