

CERTIFICATION AND ACCREDITATION FEE LEVELS—Continued

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Lead-based Paint Activities—Individual	Certification	Re-certification (every 3 years, see 40 CFR 745.226(e)(1) for details)
Inspector	\$410	\$410
Risk assessor	\$410	\$410
Supervisor	\$410	\$410
Worker	\$310	\$310
Project designer	\$410	\$410
Tribal certification (all disciplines)	\$10	\$10
Lead-based Paint Activities—Firm	Certification	Re-certification (every 3 years, see 40 CFR 745.226(f)(7) for details)
Firm	\$550	\$550
Tribal Firm	\$20	\$20

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 22

[Docket No: OST-2008-0236]

RIN 2105-AD50

Short-Term Lending Program (STLP)

AGENCY: Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In an effort to financially assist Disadvantaged Business Enterprises (DBEs) and other certified small and disadvantaged business (SDBs) in their execution of transportation related contracts at the local, state and federal levels, the Department of Transportation's (DOT) Office of Small and Disadvantaged Business Utilization (OSDBU) has developed the Short-Term Lending Program (STLP), under which DOT guarantees short-term lines of credit for said businesses. The program is administered through cooperative agreements between DOT's OSDBU and Participating Lenders and under the STLP's governing policies and procedures. This NPRM proposes new rules to govern the STLP.

DATES: Comments on the proposed rules must be received by October 20, 2008. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Agency Web site:* <http://dms.dot.gov>: Follow the instructions for submitting comments on the Web site.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room 140, Washington, DC 20590.

- *Hand Delivery:* Room 140 on the ground floor of the West Building Ground Floor, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Nancy Strine, Financial Assistance Division Manager, U.S Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Room W56-497, Washington, DC 20590. Telephone: (800) 532-1169 ext. 65343 or (202) 366-5343.

SUPPLEMENTARY INFORMATION:

Background

The Director of DOT's OSDBU has been delegated to carry out the functions vested in the Secretary of Transportation by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 940-210, as amended) known as the Minority Business Resource Center Program, which includes a guaranteed loan program. 49 U.S.C. 332 authorizes DOT's OSDBU to establish, under the Minority Resource Center, programs that would assist DBEs and SDBs in acquiring access to working capital and to debt financing, in order to obtain transportation-related contracts wholly or partially funded by DOT. To implement this authority, OSDBU developed its Short Term Lending

Program (STLP) which offers DBE's and other certified small and disadvantaged businesses short term working capital loans at variable interest rates to perform on these transportation-related contracts.

Initially developed in 1989 as a direct loan program, the STLP was converted in 2001 to a loan guarantee program under which, private sector Participating Lenders (PLs) offer loans with a government guarantee of up to 75 percent for qualified applicants.

These loans are revolving lines of credit that provide working capital funds to assist the borrower in financing the direct labor and material costs of completing transportation contracts. The contracts that are funded are assigned to the loan as collateral, and the PL advances monies up to 85% of eligible and approved Accounts Receivable that arise from the Assigned Contract(s). The contracts must be transportation-related and receive DOT funding. Repayment comes in the form of a two-party check to the borrower and to the PL directly from the contract proceeds. The total length of time that an eligible borrower may remain in the program cannot exceed a total of five years.

DOT monitors these loans, which require contract assignments and direct joint payee check remittances for principal repayment, through its relationship with the transportation agencies and recipients that receive DOT funds and the Participating Lenders (PLs).

The STLP has undergone an extensive program review to improve its business processes and achieve operational and financial efficiencies. As part of this effort, DOT is proposing regulations to replace the internal policies and guidelines currently used to manage the program.

In recent years the total funds available for full principal amount of loans under the STLP has been limited to \$18,367,000 per fiscal year.

Section-by-Section Analysis

The proposed regulations utilize objective, plain language in an attempt to make the regulations more understandable to Participating Lenders, Small and Disadvantaged Business Enterprises and other small and disadvantaged businesses.

Sec. 22.1 Purpose: The purpose of the DOT OSDBU STLP is to provide financial assistance in the form of a short-term loan from Participating Lenders that is guaranteed by DOT OSDBU, to DBE's and other certified small businesses for the execution of DOT funded and supported transportation related contracts.

Sec. 22.3 Definitions: This section contains definitions of common banking and lending terminology as included in STLP documents and the STLP Policy and Procedure Manual.

Sec. 22.11 Eligibility Criteria: Paragraph (a) defines those requirements needed in order to qualify for a STLP loan. Paragraph (b) clarifies what instrument qualifies as a "transportation-related contract," and paragraph (c) explains the maximum length of time in which a qualified business may remain as an STLP borrower, as well as what circumstances and documentation are required on an annual basis in order to remain eligible.

Sec. 22.13 Loan Terms and Conditions: Section 22.13 describes the parameters of the Short Term Lending Program, including: maximum loan amount, interest rates, the term and structure of the loan, source of funds for loan repayment, allowable uses of the loan proceeds, how loan disbursements are made, as well as any personal guarantees, collateral or insurance.

Sec. 22.15 Delinquency on Federal, State, or Municipality Debt: This section provides that the borrower must be current on all federal, state, and local taxes to be able to participate in the program.

Sec. 22.17 Compliance with Child Support Obligations: Indicates that pursuant to the Office of Management and Budget (OMB) Circular No. A-129, Revised (Policies for Federal Credit Programs and Non-Tax Receivables), individuals that are subject to administrative offset to collect delinquent child support payments are not eligible for Federal financial assistance. Therefore, STLP applicants must submit a negative certification to this effect.

Sec. 22.19 Credit Criteria: Section 22.19 describes the required creditworthiness of an STLP applicant, and lists those aspects of creditworthiness that OSDBU will consider in its evaluation of an STLP application.

Sec. 22.21 Participation Criteria: Section 22.21 describes the criteria for banks in order to qualify as STLP Participating Lenders, including certifications, documentation, history of community involvement, loan experience, and the ability to implement, monitor and manage this loan program.

Sec. 22.23 Agreement: Section 22.23 describes the Cooperative Agreement that is executed between U.S. DOT and the Participating Lender that defines the relationship between the two, as well as the responsibilities and obligations of each party with regard to the STLP.

Sec. 22.25 Lender Deliverables and Delivery Schedule: This section describes the obligation of the Participating Lenders to adhere to established deadlines for actions such as, the submission of periodic reports and site visits.

Sec. 22.27 Eligible Reimbursements to PLs: Section 22.27 describes the fees and expenses that are eligible for reimbursement to the Participating Lenders.

Sec. 22.29 DOT OSDBU Access to PLs' Files: Section 22.29 describes the policy that governs DOT access to Participating Lender records and files.

Sec. 22.31 Suspension or Revocation of Eligibility to Participate: This section describes the circumstances under which the STLP eligibility of a Participating Lender may be suspended or revoked, and the notification procedure for such an action.

Sec. 22.33 Termination of Participation in STLP: Section 22.33 explains the situations, under which the cooperative agreement between DOT OSDBU and the Participating Lender may be terminated, by either party, and the notification procedure for such action.

Sec. 22.41 Application Procedures: Describes the complete STLP application process, the supporting documentation that must accompany the STLP application, and the submission process of the application to the Participating Lender.

Sec. 22.43 Approval or Denial: Section 22.43 describes what will occur when an application is approved or denied, and the method of notification.

Sec. 22.45 Allowable Fees to Borrowers: This section describes those fees that a Participating Lender may collect from the borrower.

Sec. 22.51 Loan Closing: Section 22.51 discusses the process that the Participating Lender must follow for the closing of an STLP loan.

Sec. 22.53 Loan Monitoring and Servicing Requirements: Section 22.53 describes what is required of the Participating Lender insofar as the monitoring and servicing of an STLP loan.

Sec. 22.57 Loan Reporting Requirements: Section 22.57 clarifies that the STLP loan is subject to the Federal Credit Reform Act of 1990, and describes those reporting requirements that a Participating Lender must undertake to keep DOT OSDBU informed of the borrower's compliance with the terms of the STLP loan.

Sec. 22.59 Loan Modifications: Describes the procedure that the Participating Lender must follow for any proposed modifications of the terms of the guarantee agreement between DOT OSDBU and the Participating Lender.

Sec. 22.61 Loan Guarantee Extensions: Section 22.61 describes the process under which an extension of the loan guarantee extension may be requested and granted.

Sec. 22.63 Loan Close Outs: Section 22.63 describes the process for closing out a loan that has been fully repaid.

Sec. 22.65 Subordination: Section 22.65 describes the parameters of a subordination of the line of credit in which the debt guarantee of DOT OSDBU has priority over any other debt of the borrower.

Sec. 22.67 Delinquent Loans and Loan Defaults: This section describes the notification procedure that a Participating Lender must undertake whenever an STLP loan is delinquent. This section also indicates the possible collection or litigation processes that are available in the event of loan delinquency or default.

Sec. 22.69 Claim Process: Section 22.69 describes the action that the Participating Lender may take once all means for the collection of a delinquent debt have been exhausted.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order, as it does not have an annual effect on the economy of \$100 million or more, nor affect the economy adversely; does not interfere or cause a serious

inconsistency with any action or plan of another agency; does not materially alter the impact of entitlements, grants, user fees or loan programs; and does raise novel legal or policy issues.

Executive Order 12372
(Intergovernmental Review)

The STLP is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development, as the STLP program facilitates the participation of small and disadvantaged businesses in fully or partially federally funded local and state transportation projects.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Some provisions published as a part of this rule are, in fact, a benefit to small entities. The STLP provides a loan guarantee for DBEs and SDBs who require financial assistance to perform on transportation-related contracts. Since this rule has no significant economic impact on a substantial number of small entities, a regulatory flexibility analysis was not performed.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism, as the loan program creates relationships and obligations between a borrower (usually a sub-contractor), a prime contractor, a Participating Lender and DOT/OSDBU only.

Paperwork Reduction Act

DOT/OSDBU invites public comment about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act (PRA) of 1995.

It is estimated that the total burden hours for 100 Participating Lenders to qualify as such, monitor loans, comply

with monthly reporting and retain loan records to be approximately 8,000 hours per year. It is estimated that the total burden hours for 100 borrowers to complete the STLP application, with supporting documentation, loan renewals and the submission of the same, to be approximately 2,700 hours.

Title: Short Term Lending Program—Participating Lenders—Qualifying Criteria

Background: OSDBU's Short Term Lending Program (STLP) offers certified Disadvantaged Business Enterprises (DBEs) and other Certified Small Businesses (8a, women-owned, small disadvantaged, HubZone, veteran-owned, and service-disabled veteran-owned) the opportunity to obtain short-term working capital at prime interest rates for transportation-related projects. The STLP provides up to a 75% guaranteed revolving line of credit for a maximum of \$750,000 to finance accounts receivable arising from transportation-related contracts. The primary collateral consists of the proceeds of the transportation-related contracts. These loans are provided through banks that serve as STLP Participating Lenders (PL).

PL Qualifying Criteria

As a requirement for approval as a PL, banks must submit documentation that demonstrates:

(A) Their philosophy and history of lending to small and disadvantaged businesses in their communities. As part of their submission, the bank must show these efforts in relationship to its overall lending portfolio.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 3 hours.

Estimated Total Annual Burden Hours: 300 hours.

(B) Their experience in administering monitored lines of credit, such as construction loans, accounts receivable financing, and/or contract financing for at least two years. Such experience should be held by any PL representative managing, reviewing or authorizing STLP loan portfolios.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 1/2 hour.

Estimated Total Annual Burden Hours: 50 hours.

(C) At least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development

Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 1/2 hour.
Estimated Total Annual Burden Hours: 50 hours.

(D) At least a satisfactory or better Community Reinvestment Act (CRA) rating.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(E) The ability to implement, monitor and manage a two-party payee check system, in which the PL and borrower are joint payees of any checks paid to the borrower for performance under the assigned contract(s).

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(F) That it is not currently debarred or suspended from participation in a government contract or delinquent on a government debt by submitting a current SBA Form 1624 or its equivalent. The SBA Form 1624 is available at <http://www.sba.gov/sbaforms/sba1624.pdf>. (see Appendix E)

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(G) That it is a drug-free workplace by executing a Certification of Compliance concerning a drug-free workplace. The Certification is provided by OSDBU. (see Appendix C)

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

(H) That no Federal funds will be utilized for lobbying by executing a Certificate Regarding Lobbying in compliance with Section 1352, Title 21, of the U.S. Code. The Certificate is provided by OSDBU. (see Appendix D)

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 15 minutes.
Estimated Total Annual Burden Hours: 25 hours.

PL Record Retention

A PL must allow the authorized representatives of OSDDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to OSDDBU guaranteed loans. The PL shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of their Cooperative Agreement with OSDDBU for a period of not less than three years from the date of termination of the Cooperative Agreement or payment in full from the borrower; except, if any litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

Respondents: 100.

Frequency: Annually.

Estimated Average Burden per

Response: 1/2 hour.

Estimated Total Annual Burden

Hours: 50 hours.

PL Reporting Requirements

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. The PL must undertake processes to activate, monitor, service and close-out STLP loans. To fulfill the requirements of FCRA, the PL must submit regular reports and required documentation to OSDDBU on these processes.

(A) Loan Activation: The PL must submit to OSDDBU a Loan Activation Form that indicates the date in which the loan has been activated/funded. The form is provided by OSDDBU. (see Appendix A)

Respondents: 100.

Frequency: Annually, up to five years.

Estimated Average Burden per

Response: 1/2 hour.

Estimated Total Annual Burden

Hours: 50 hours.

(B) Loan Close-out: The PL must submit to OSDDBU a Loan Close-out Form upon full repayment of the STLP loan, or upon expiration of the loan guarantee. The form is provided by OSDDBU. (See Appendix B.)

Respondents: 100.

Frequency: Annually.

Estimated Average Burden per

Response: 1/2 hour.

Estimated Total Annual Burden

Hours: 50 hours.

(C) Monthly Reporting Requirement: PL must submit each month to OSDDBU

a status report of pending loans and guaranteed loans including the previous month's activity for these loans. The forms are provided by OSDDBU.

Respondents: 100.

Frequency: Monthly.

Estimated Average Burden per

Response: 1 hour.

Estimated Total Annual Burden

Hours: 1200 hours.

(D) Call Reports or Thrift Financial Reports: PLs shall provide two copies of their quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council—FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision—OTS Form 1313) within 60 days after the close of each calendar quarter.

Respondents: 100.

Frequency: Quarterly.

Estimated Average Burden per

Response: 15 minutes.

Estimated Total Annual Burden

Hours: 100 hours.

(E) Credit verification: When a PL submits to OSDDBU an approved loan package, the same must be accompanied by the PL's internal credit approval memo, credit analysis, and any other third-party credit verifications obtained for the processing of the loan application.

Respondents: 100.

Frequency: For each loan submitted (minimum 1, approximate maximum 5).

Estimated Average Burden per

Response: 12 hours.

Estimated Total Annual Burden

Hours: (1200, 6000).

(F) Loan Guarantee Extension: An extension of the original loan guarantee for a maximum period of ninety (90) days may be requested, in writing, by the PL using the STLP Extension Request Form. The form is provided by OSDDBU. (See Appendix F.)

Respondents: 100.

Frequency: Annually.

Estimated Average Burden per

Response: 1/2 hour.

Estimated Total Annual Burden

Hours: 50 hours.

Loan Application Process—Loan Renewal

A current STLP participant may submit a guaranteed loan renewal application package, comprised of an updated loan application, with supporting documentation.

(A) Updated loan application form. The application may be obtained directly from OSDDBU, from a current PL, or online from the agency's Web site currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

Respondents: 100.

Frequency: Annually, up to five years.

Estimated Average Burden per Response: 8 hours.

Estimated Total Annual Burden Hours: 800 hours.

(B) Application supporting documentation. Supporting documentation may include, but is not limited to, the following items:

a. Current job performance reference letter (within the past 12 months);

b. Evidence of current DBE and/or other eligible certification;

c. Business tax returns for the most recent fiscal year;

d. Business financial statements for the most recent fiscal year;

e. If the business' last fiscal year has ended longer than 90 days at the time of application, then applicant must submit interim business financial statements to include balance sheet, P&L and updated aging reports of both receivables and payables;

f. Current work in progress schedule or statement;

g. Personal income tax returns;

h. Personal financial statements;

i. Signed and dated copy of transportation-related contracts to be used as collateral; and

j. Updated cash flow projections;

Respondents: 100.

Frequency: Annually, up to five years.

Estimated Average Burden per

Response: 4 hours.

Estimated Total Annual Burden

Hours: 400 hours.

New Loan Application Process

A potential STLP participant must submit a guaranteed loan application package, comprised of a loan application, with supporting documentation.

(A) Completed loan application form. The application may be obtained directly from OSDDBU, from a current PL, or online from the agency's Web site currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

Respondents: 100.

Frequency: Once.

Estimated Average Burden per

Response: 2 hours.

Estimated Total Annual Burden

Hours: 200 hours.

(B) New loan application supporting documentation may include, but is not limited to, the following items:

a. Business, trade or job performance reference letters;

b. DBE or other eligible certification letters;

c. Signed and dated borrower certification that all federal, state and local taxes are current;

d. Business tax returns;

e. Business financial statements;

f. Personal income tax returns;

g. personal financial statements;
 h. Schedule of work in progress;
 i. Signed and dated copy of transportation-related contracts to be used as collateral;
 j. Business debt schedule;
 k. Income and cash flow projections;
 l. Evidence of bonding and insurance.
Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 12 hours.
Estimated Total Annual Burden Hours: 1200 hours.

(e) Loan package submission: Application packages are submitted directly to a PL in the applicant's geographic area. The list of PLs is available on the OSDBU Web site: <http://osdbu.dot.gov/Default.aspx?tabid=72>. In the event that there is no PL in the applicant's geographic area, the loan application package may be sent directly to OSDBU at 400 Seventh Street, SW., Room 9414, S-40, Attention STLP, Washington, DC 20590.

Respondents: 100.
Frequency: Once.
Estimated Average Burden per Response: 1 hour.
Estimated Total Annual Burden Hours: 100 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the OSDBU's performance; (2) the accuracy of the estimated burdens; (3) ways for OSDBU to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

List of Subjects in 49 CFR Part 22

Loan programs—Business and Industry, Programs, Small Business, Transportation, Commerce.

Issued this 24th day of July, 2008, at Washington, DC.

Mary E. Peters,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR part 22 is proposed to be added to read as follows:

PART 22—SHORT-TERM LENDING PROGRAM (STLP)

Subpart A—General

Sec.

22.1 Purpose.
 22.3 Definitions.

Subpart B—Policies Applying to STLP Loans

22.11 Eligibility criteria.
 22.13 Loan terms and conditions.
 22.15 Delinquency on Federal, State, and municipal debt.
 22.17 Compliance with child support obligations.
 22.19 Credit criteria.

Subpart C—Participating Lenders

22.21 Participation criteria.
 22.23 Agreements.
 22.25 Lender deliverables and delivery schedule.
 22.27 Eligible reimbursements to PLs.
 22.29 DOT OSDBU access to PL files.
 22.31 Suspension or revocation of eligibility to participate.
 22.33 Termination of participation in the STLP.

Subpart D—Loan Application Process

22.41 Application procedures.
 22.43 Approvals and denials.
 22.45 Allowable fees to borrowers.

Subpart E—Loan Administration

22.51 Loan closings.
 22.53 Loan monitoring & servicing requirements.
 22.57 Loan reporting requirements.
 22.59 Loan modifications.
 22.61 Loan guarantee extensions.
 22.63 Loan close outs.
 22.65 Subordination.
 22.67 Delinquent loans and loan defaults.
 22.69 Claims process.

Appendix A to Part 22—Bank Verification Loan Activation Form
 Appendix B to Part 22—Bank Acknowledgement Loan Close-out Form
 Appendix C to Part 22—Drug-Free Workplace Act Certification
 Appendix D to Part 22—Certification Regarding Lobbying
 Appendix E to Part 22—Certification Regarding Debarment, Suspension
 Appendix F to Part 22—Bank Verification Extension Request Form
 Appendix G to Part 22—Cooperative Agreement
 Appendix H to Part 22—Guarantee Agreement

Authority: 49 U.S.C. 332.

Subpart A—General

§ 22.1 Purpose.

The purpose of the DOT OSDBU STLP is to provide financial assistance in the form of a short-term loan from Participating Lenders that is guaranteed by DOT OSDBU, to DBE's and SDBs for the execution of DOT funded and supported transportation related contracts.

§ 22.3 Definitions.

Accounts Receivable means monies that are due to the borrower for work performed or services rendered under a contract, subcontract, or purchase order.

Activation Date means the date that the STLP loan is established on the PL's books and recorded as an open loan. It is also the date that the borrower can begin to draw funds from the line of credit. Activation date is also the date in which the DOT OSDBU guarantee becomes effective.

Assigned Contract means the transportation-related contract(s), subcontract(s), and/or purchase order(s) that has been pledged as collateral to a STLP loan and perfected through an assignment form executed by all appropriate parties.

Borrower is the obligor of a DOT OSDBU guaranteed loan.

Cooperative agreement is the written agreement between DOT OSDBU and a PL that outlines the terms and conditions under which the lender may submit eligible loan requests to DOT OSDBU for consideration of its loan guarantee. The cooperative agreement further outlines the responsibilities and requirements of the lender in order to participate in the STLP.

Director means Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation.

Disadvantaged business enterprise or DBE means a business that is certified as such by a recipient of DOT financial assistance as provided in 49 CFR part 23 or 49 CFR part 26.

Guarantee Agreement means DOT OSDBU's written agreement with a PL that provides the terms and conditions under which DOT OSDBU will guarantee a STLP loan. It is not a contract to make a direct loan to the borrower.

Loan Guarantee means the agreement of DOT OSDBU to issue a guarantee of payment of a specified portion of an approved STLP loan to the PL, under DOT OSDBU stated terms and conditions, in the event that the borrower defaults on the loan.

Loan purpose means the approved uses for STLP loan proceeds. That is, only for short-term working capital needs related to the direct costs of an eligible transportation-related contract.

Other Eligible Certifications mean the following certifications obtained by a borrower through the U.S. Small Business Administration (SBA): Small Disadvantaged Business (SDB); Section 8(a) Program participant; HUBZONE Empowerment Contracting Program; and Service-Disabled Veteran Program (SDV).

Participating Lender (PL) is a bank or other lending institution that has agreed to the terms of a cooperative agreement and has been formally accepted into the STLP by DOT OSDBU.

Small and disadvantaged business (SDB) includes 8(a); small disadvantaged business; women-owned business, HubZone, and service-disabled veteran-owned business.

Socially and economically disadvantaged individual has the same meaning as stated in 49 CFR 26.5.

Technical Assistance means service provided by the PL to the DBE or SDB that will enable the DBE or SDB to become more capable of managing its transportation-related contracts. Technical assistance can be provided by collaborating with agencies that offer small business management counseling such as the SBA, the U.S. Department of Commerce's Minority Business Development Centers (MBDCs), the Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs).

Transportation-related contract means a contract, subcontract, or purchase order, at any tier, for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation that receive DOT funding.

Work-out means a plan that offers options to avoid loan default or collateral foreclosure and/or liquidation that is intended to resolve delinquent loans or loans in imminent default, which may include, but not limited to: deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity and the government guarantee to the PL, or postponing collection action.

Subpart B—Policies Applying to STLP Loans

§ 22.11 Eligibility criteria.

(a) *Eligible borrower.* To be eligible to apply for a STLP loan guarantee, a borrower must meet the following requirements:

- (1) Be a for-profit entity;
- (2) Have an eligible transportation-related contract;
- (3) Demonstrate an eligible use for the desired credit;
- (4) Be an established business with experience in the transportation industry and trade for which the STLP loan is sought;
- (5) Be certified as a DBE or have another eligible certification issued by the SBA; and
- (6) Be current on all federal, state, and local tax liabilities.

(b) *Eligible transportation-related Contract.* Any fully-executed transportation-related contract, subcontract, or purchase order held

directly with DOT or with grantees and recipients receiving federal funding from DOT for the maintenance, rehabilitation, restructuring, improvement or revitalization of any of the nation's modes of transportation shall be considered an eligible contract.

(c) *Eligibility Period.* A borrower is eligible for participation in the STLP for a period up to a total of five (5) years. The STLP renewal is not automatic. The borrower has to demonstrate its continued eligibility and creditworthiness for STLP and must submit a complete application package.

(1) The continued eligibility of any borrower who would exceed the period limit in paragraph (c) of this section will be determined on a case-by-case basis by the OSDBU Director and is subject to the following provisions:

- (i) The STLP loan guarantee may be reduced; and
- (ii) The STLP loan interest rate may be increased.

(2) Should any borrower currently in the STLP become ineligible per paragraph (a) of this section during the term of a STLP loan, the failure to comply with a specific requirement must be brought to the immediate attention of all remaining parties.

(3) Borrower ineligibility may result in a termination of the current guarantee.

§ 22.13 Loan terms and conditions.

(a) *Amount.* The maximum face amount for an individual STLP loan may not exceed seven hundred and fifty thousand (\$750,000) dollars, unless the requested increased amount is authorized by the OSDBU Director.

(b) *Interest Rates.* All STLP loans shall have a variable interest rate.

(1) *Initial Interest Rate.* The base rate guideline for STLP loans is the prime rate in effect on the first business day of the month in which the STLP loan guarantee is approved by DOT OSDBU. The prime rate is the rate printed in a national financial newspaper published each business day. The PL may increase the base rate by the maximum allowable percentage points currently allowed by STLP policies and procedures and as communicated in subsequent DOT OSDBU notices.

(2) *Frequency of Change.* The first change may occur on the first calendar day of the month following the initial loan disbursement, using the above base rate in effect on the first business day of the month. Subsequent interest rate changes may occur no more than monthly.

(c) *Loan Structure and Term.* A STLP loan shall be set up as a revolving line of credit. The line permits the borrower

to request principal advances, pay them back, and then re-borrow, not to exceed the face value of the line of credit. PLs are required to provide DOT OSDBU written notification of the activation date of each line of credit under the STLP. The term of the federal guarantee of the line of credit commences on the activation date.

(d) *Repayment.* Interest payments must be made monthly. The principal of the loan is repaid as payment from approved accounts receivable are received by the PL through a joint payee check system. The assigned contract supporting the STLP loan is the primary source of repayment.

(e) *Use of Loan Proceeds.* STLP loans must be used to finance short-term working capital needs, specifically direct costs generated by the assigned contract. Proceeds may not be used for the following purposes:

- (1) For long term working capital;
- (2) To repay delinquent State or Federal withholding taxes, local taxes, sales taxes or similar funds that should be held in trust or escrow; and/or
- (3) To provide funds for the distribution or payment to the owners, partners or shareholders of the business; and/or
- (4) To retire short or long-term debt.

(f) Non-compliance by the DBE in using the STLP loan for purposes not consistent with these regulations will result in a non-renewal of the STLP loan and in forfeiture of the STLP loan guarantee to the PL on any ineligible principal advances requested by the borrower and made by the PL.

(g) *Disbursements.* STLP funds may only be released to an eligible borrower upon the submission and verification of a valid written accounts receivable invoice, showing labor and/or materials amounts due for completed work on the contract. The PL must verify the accuracy of the invoice with the paying transportation government agency, if the borrower is a prime contractor, and/or with the prime contractor, if the borrower is a subcontractor. This verification must be obtained by the PL prior to advancing funds. No more than 85% of an approved accounts receivable invoice shall be advanced to the borrower by the PL.

(1) *Processing time.* Disbursement of STLP funds to the borrower should be accomplished within three (3) business days of an accounts receivable invoice approval by the paying agency and/or prime contractor.

(2) *Electronic funds transfer.* If the disbursement of STLP funds is being sent to the borrower through a local participating PL, the disbursement should be made by electronic funds

transfer with the preferred method of payment being the Automated Clearing House (ACH) system.

(3) Wire transfers. Wire transfers can be used if the ACH system is not available or if a same day disbursement is required.

(4) Joint payee check system. A two-party payee check system is required in which the PL and the borrower will be the co-payees of any checks paid to the borrower for performance under the assigned contract. Alternative payment methods must have prior written approval by DOT OSDBU.

(h) *Personal Guarantees*. Individuals who own at least a 20% ownership interest in the borrower shall personally guarantee the STLP loan. DOT OSDBU, in its discretion and in consulting with the PL, may require other appropriate guarantees for the loan as well.

(i) *Collateral*. All advances under the STLP loan must be secured, at a minimum, by the assignment of the proceeds due under the transportation-related contract(s) being funded with loan proceeds (the Assigned Contract). The PL must have first lien position on the Accounts Receivable generated by the Assigned Contract. The PL and/or DOT OSDBU may request additional collateral on any loan request or loan guarantee request in order to mitigate the credit risk and reduce potential defaults and loan losses.

(j) *Key person life insurance*. The assignment of existing life insurance policies of personal guarantors or other individuals critical to the borrower's operations may be required by the PL and/or DOT OSDBU in certain instances; and it is encouraged for those business applicants that do not have a management succession plan clearly in place or where a personal guarantee provides nominal financial strength to the credit.

§ 22.15 Delinquency on Federal, State, or municipality debt.

(a) The borrower must not be delinquent on any Federal, State, or municipality debt, including tax debts. Further, none of the principals and/or owners of the borrower can be delinquent on any federal, state, or municipality debt, including personal tax debt. The borrower must acknowledge its status in writing as part of any STLP loan guarantee application. PLs and the DOT OSDBU must verify the borrower's status through the use of business and personal credit reports, as well as other appropriate federal and state databases.

(b) If any delinquencies are determined during the application process, consideration of the request

must be suspended until the delinquency is satisfactorily resolved, as determined and approved by the Director. If the delinquency cannot be resolved within a reasonable amount of time, the loan request must be declined.

§ 22.17 Compliance with child support obligations.

Any holder of 50% or more of the ownership interest in the recipient of a STLP Loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

- (a) An administrative order;
- (b) A court order;
- (c) A repayment agreement between the holder and a custodial parent; or
- (d) A repayment agreement between the holder and a State agency providing child support enforcement services.

§ 22.19 Credit criteria.

An applicant for a STLP loan must be creditworthy and demonstrate an ability to repay the loan as well as satisfactory handling of the repayment of past and current debts. The PL and DOT OSDBU shall consider:

- (a) Character, reputation, and credit history of the applicant, its principals and owners, and all other guarantors;
- (b) Experience and depth of key management in the industry;
- (c) Financial strength of the business;
- (d) Past earnings, projected earnings and cash flow, and work in progress;
- (e) Ability to repay the loan;
- (f) Sufficient equity to operate on a sound financial basis; and
- (g) Capacity to perform under the transportation-related contract(s).

Subpart C—Participating Lenders

§ 22.21 Participation criteria.

A lender who participates in the STLP must meet the following criteria:

- (a) It must operate as a lending institution certified by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, Community Development Corporation (CDC), or Community Development Financial Institution (CDFI), for at least five (5) years;
- (b) It must demonstrate a philosophy and history of lending to small, disadvantaged and women-owned businesses in their communities. Information will be requested by the Director on the number of short-term loans made to companies listed in § 22.11(a)(5). The PL shall submit information showing its efforts in relationship to its overall portfolio;
- (c) It must demonstrate experience in administering monitored lines of credit,

such as construction loans, accounts receivable financing, and/or contract financing. for at least two years. Such experience should be held by any PL representative managing, reviewing or authorizing STLP loan portfolios;

(d) It must have at least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

(e) It must have at least a satisfactory or better Community Reinvestment Act (CRA) rating;

(f) It must designate a PL representative to effectively administer the STLP loan portfolio;

(g) It must have the ability to evaluate, process, close, disburse, service and liquidate STLP loans;

(h) It must demonstrate the ability to implement, monitor and manage a two-party payee check system, in which the PL and borrower are joint payees of any checks paid to the borrower for performance under the assigned contract(s);

(i) It must submit a current SBA Form 1624 or equivalent, stating that the lender is not currently debarred or suspended from participation in a government contract or delinquent on a government debt (see appendix E to part 22);

(j) It must execute a certification of compliance concerning a drug-free workplace (see Appendix C to Part 22); and

(k) It must execute a Certificate Regarding Lobbying in compliance with Section 1352, Title 21, U.S. Code (see appendix D to part 22).

§ 22.23 Agreements.

(a) DOT OSDBU may enter into a cooperative agreement with a lender that meets the criteria defined in § 22.21 in order for the lender to become a participant in the STLP. Such an agreement does not obligate DOT OSDBU to participate in any specific proposed loan that a lender may submit. The existence of a cooperative agreement does not limit the rights of DOT OSDBU to deny a specific loan or establish general policies. (See appendix G to part 22).

(b) The cooperative agreement is generally for a minimum period of twenty-four (24) months. DOT OSDBU will consider the cooperative agreement for renewal at the end of the designated term. If a cooperative agreement has

expired, no further applications for the STLP shall be submitted to DOT OSDBU by the PL until a new cooperative agreement is executed by both parties.

(c) Unless instructed otherwise by DOT OSDBU, after the expiration of the cooperative agreement, the PL will complete the documentation of any loans which have been given final DOT OSDBU approval prior to expiration of the cooperative agreement.

(d) Following the expiration of the cooperative agreement, the PL may, subject to the written concurrence of DOT OSDBU, sell its STLP loans to another bank or to another PL that assumes the original rights and responsibilities to fund, service and collect the loan or loans.

§ 22.25 Lender deliverables and delivery schedule.

All PLs must adhere to certain required periodic reports, submissions, and other actions that are outlined in the cooperative agreement and the loan guarantee agreements, as well as to the required due dates to DOT OSDBU.

§ 22.27 Eligible reimbursements to PLs.

PLs will be reimbursed by DOT OSDBU for reasonable expenses and costs that are incurred in the processing, administration, and monitoring of a STLP loan. The PL will be reimbursed as follows:

(a) *Processing/Underwriting fee.* A fee, as specified in the cooperative agreement will be reimbursed by DOT OSDBU, with a minimum fee of not less than one thousand (\$1,000), per approved STLP loan guarantee, provided that DOT OSDBU receives proper notification of the activation date of the STLP loan.

(b) *Additional Administrative fee:* For total loan amounts of \$150,000.00 or less, the PL can request an additional one-half (½) percent administrative fee for the increased loan monitoring and administrative assistance required to process the loan. The request must be supported with the information specified in the cooperative agreement.

(c) *Travel expenses.* For any pre-approved travel expenses, the PL will be reimbursed for certain costs, provided that paragraphs (c)(1), (2), and (3) of this section are met:

(1) A written request for travel, along with a statement of the purpose of the travel and proposed cost estimate, is submitted for DOT OSDBU for its approval no less than ten (10) business days prior to travel; and

(2) A travel invoice accompanied by a written report explaining the findings of the travel is submitted to DOT OSDBU no later than thirty (30) days following the approved travel.

(3) Payment or reimbursement for travel shall be in accordance with the Joint Travel Regulations, Federal Travel Regulations and DOD FAR 31.205.46.

(d) *Attorney fees.* Legal fees incurred by the PL may be eligible for reimbursement. Prior written approval from DOT OSDBU is required. Attorney fees will be reimbursed on a pro-rata basis in proportion to the percentage of the government loan guarantee in relation to the total loan amount.

§ 22.29 DOT OSDBU access to PLs files.

A PL must allow the authorized representatives of DOT OSDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to DOT OSDBU guaranteed loans. Record retention of all relevant documents and other materials is specified in the cooperative agreement between DOT OSDBU and the PL.

§ 22.31 Suspension or revocation of eligibility to participate.

(a) DOT OSDBU may suspend or revoke the eligibility of a PL to participate in the STLP by giving written notice in accordance with the terms and conditions cited in the cooperative agreement. Such notice may be given because of a violation of DOT OSDBU regulations; a breach of any agreement with DOT OSDBU; a change of circumstance resulting in the PL's inability to meet operational requirements; or a failure to engage in prudent lending practices. A suspension or revocation will not invalidate a loan guarantee previously approved by DOT OSDBU, providing that the specific loan was handled in accordance with its guarantee agreement, the cooperative agreement and/or these regulations.

(b) The written notice to suspend or revoke participation in the STLP will specify the corrective actions that the PL must take, as well as the time period allowed for cure, prior to DOT OSDBU considering a termination of the cooperative agreement.

§ 22.33 Termination of participation in the STLP.

(a) *DOT OSDBU Termination for Convenience.* DOT OSDBU may terminate a cooperative agreement for the convenience of the government, and without cause, upon prior written notice of thirty (30) days of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the PL which received the Director's final approval, prior to the effective date of termination.

(b) *Participating Lender's Termination.* The PL may terminate a cooperative agreement with written notice of sixty (60) days to DOT OSDBU of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the PL which received the Director's final approval, prior to the effective date of termination.

(c) *DOT OSDBU Termination for Cause.* DOT OSDBU may terminate a cooperative agreement, in whole or in part, at any time before the expiration of the term of the cooperative agreement or the expiration of any renewal term of the cooperative agreement, and without allowing any cure period as described in § 22.23 of this part, if it determines that the PL failed to comply with any terms and conditions of its cooperative agreement and such failure cannot be reasonably addressed. DOT OSDBU shall promptly notify the PL in writing of this determination and the reasons for the termination, together with the effective date of termination.

(d) DOT OSDBU may also terminate for cause any cooperative agreement with a PL that fails to comply with the corrective actions requested in a written notice of suspension or revocation within the specified cure period, in accordance with the terms and conditions further described in the cooperative agreement.

Subpart D—Loan Application Process

§ 22.41 Application procedures.

(a) A STLP loan guarantee request application package shall consist of the DOT OSDBU Application for Loan Guarantee and supporting documentation as outlined below at (b). The application can be obtained directly from the office of DOT OSDBU, from a current PL, or online from the agency's Web site currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

(b) Supporting documentation may include, but is not limited to, the following items: Business, trade or job performance reference letters; current DBE or SDB eligibility certification letters and/or affidavit; signed and dated borrower certification that all federal, state and local taxes are current; business tax returns; business financial statements; personal income tax returns; personal financial statements; schedule of work in progress; signed and dated copy of transportation-related contracts; business debt schedule; income and cash flow projections; and evidence of bonding and insurance. It also includes, from the PL, the lender's internal credit

approval memo and analysis; and other third-party credit verifications obtained.

(c) Application packages are submitted directly to a PL, which will perform its own credit review. The PL must initially approve or decline the loan based upon its internal analysis of the request. Loans approved by the PL are then forwarded to DOT OSDBU for its STLP eligibility review and independent credit review, and for presentation to the DOT OSDBU Loan Committee. All loan approvals shall require the final approval of the Director, or the Director's designee, for the issuance of a Government Loan Guarantee.

§ 22.43 Approval or denial.

If a loan guarantee is approved by DOT OSDBU, a Guarantee Agreement will be issued to the PL. If a loan guarantee is declined by the PL, the PL is responsible for communicating the reasons for the decline to the applicant. If a loan guarantee is declined by the DOT OSDBU, DOT OSDBU will be responsible for communicating the reasons for the decline to the applicant. The PL must notify the applicant, in writing, the reasons for the decline; and a copy of this notification must be sent to DOT OSDBU. (see form DOT # F 2314-1)

§ 22.45 Allowable fees to borrowers.

(a) *Application fees.* The PL may charge the applicant a non-refundable loan application fee, as determined from time to time by DOT OSDBU, for each STLP loan application processed, whether a new loan request or a renewal request.

(b) *Reasonable closing expenses.* The PL may collect reasonable closing expenses from the borrower, provided that full disclosure of such fees is made to the borrower prior to the loan closing date. These expenses include necessary out-of-pocket expenses to third parties such as filing and recordation fees, as well as loan closing document preparation fees, whenever the PL charges similar fees to its non STLP borrowers.

Subpart E—Loan Administration

§ 22.51 Loan closings.

(a) The PL must promptly close all STLP loans in accordance with the terms and conditions approved by DOT OSDBU in its Guarantee Agreement. The PL must report circumstances concerning any STLP loans not closed within a reasonable time period after DOT OSDBU approval.

(b) The PL uses its own internal loan closing documents and must use

standard banking practices and procedures to ensure proper execution of the debt and perfection of the collateral. The PL must forward copies of all executed closing documents and filings to DOT OSDBU within the time period specified in the cooperative agreement.

§ 22.53 Loan monitoring and servicing requirements.

The PL must review STLP principal advance requests, process loan disbursements, and payments, and maintain contact with the borrower during the term of the loan. The PL must monitor the progress of the project being financed and the borrower's continued compliance with the terms and conditions of the loan. The PL must promptly report any material adverse change in the financial condition or business operations of the borrower to DOT OSDBU.

§ 22.57 Loan reporting requirements.

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. To fulfill the requirements of FCRA, the PL must provide DOT OSDBU prompt written notification of the activation date (form # DOT F 2302-1), and the date the loan is repaid and closed (form # DOT F 2304-1). To fulfill this requirement, the PL must submit a monthly report to the DOT OSDBU covering the previous month's STLP loans in process and those that are active.

§ 22.59 Loan modifications.

Any modification to the terms of the DOT OSDBU guarantee agreement must have prior written approval of the Director, and executed in writing as an Addendum to the original guarantee agreement.

§ 22.61 Loan guarantee extensions.

An extension of the original loan guarantee may be requested, in writing, by the PL using form # DOT F 2310-1. The request must comply with the terms and conditions described in the guarantee agreement and with the STLP policies and procedures. All extension requests must be approved by the Director. The maximum extension period for a loan guarantee is ninety (90) days.

§ 22.63 Loan close outs.

Upon full repayment of the STLP loan, or upon expiration of the loan guarantee, the PL must submit an

executed loan guarantee close-out form # DOT F 2304-1 to DOT OSDBU.

§ 22.65 Subordination.

DOT OSDBU must not be placed in a subordinate position to any other debt.

§ 22.67 Delinquent loans and loan defaults.

(a) The PL must bring to the immediate attention of the Director and delinquent STLP loans. The PL and DOT OSDBU are jointly responsible for establishing collection procedures and must exercise due diligence with respect to collection of delinquent debt. The PL is responsible for initiating actions to recover such debt. DOT OSDBU must approve any compromise of a claim, resolution of a dispute, suspension or termination of collection action, or referral for litigation. A work-out solution will only be considered if it is expected to minimize the cost to the federal government in resolving repayment delinquencies and/or loan default. They must only be used when the borrower is likely to be able to repay the loan under the terms of the work-out, and if the cost of establishing the work-out plan is less than the costs of loan default and/or foreclosure.

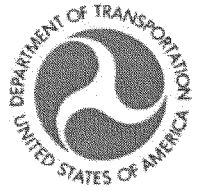
(b) In an appropriate situation, DOT OSDBU may authorize the PL to undertake legal action deemed necessary to collect delinquent loans and DOT will reimburse the PL on a pro rata basis in proportion to the loan guarantee percentage for the associated fees and costs, with prior authorization from the Director. Penalties and late fees are not eligible for reimbursement. Any legal action undertaken by the PL without OSDBU authorization, will not be eligible for a pro rata basis reimbursement of the associated fees and costs. Net recoveries applicable to accrued interest must be applied on a pro rata basis in proportion to the formula used during the term of the loan.

§ 22.69 Claim process.

After reasonable efforts have been exhausted to collect on a delinquent debt, the PL may demand in writing that DOT OSDBU honor its loan guarantee, provided however that the maximum liability of DOT OSDBU shall not at any time exceed the guaranteed amount. The borrower must be in default for no less than thirty (30) days, and the PL must have made written demand for payment from the borrower, in accordance with the guarantee agreement.


BILLING CODE 4910-9X-P

Appendix A to Part 22--Bank Verification Loan Activation Form

Office of Small and Disadvantaged Business Utilization SHORT TERM LENDING PROGRAM BANK VERIFICATION LOAN ACTIVATION FORM		
Participating Lender		
Borrower		
State _____	City _____	
Loan Amount	\$ _____	
DOT Guarantee Amount	\$ _____	
Loan has been activated this date:	_____	
Bank Representative (print)	_____	
Signature	_____	
Do Not Write Below – For Internal Use Only		
Date Received _____		
Administrative Fee \$ _____	04A0155060.2007.3407100000.0044000000.41000	
	S-40 _____ Date _____ S-40 _____ Date _____ Director _____ Date _____	

	B-10 _____ Date _____
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Appendix B to Part 22 --Bank Acknowledgement Loan Close-out Form

Office of Small and Disadvantaged Business Utilization SHORT TERM LENDING PROGRAM BANK ACKNOWLEDGEMENT LOAN CLOSE-OUT FORM		
Participating Lender		
Borrower		
City _____ State _____	Bank Loan Identification Number	_____
Loan Amount \$ _____	Loan Activation Date _____	
DOT Guarantee Amount	\$ _____	
Loan Close-Out Date:	_____	
Bank Representative (print)	_____	
Signature	_____	

Do Not Write Below - For Internal Use Only	
STLP Loan Number _____	Expected STLP _____
Cohort _____ Subsidy Rate _____	Graduation Date _____

Appendix C to Part 22—Drug-Free Workplace Act Certification

DRUG-FREE WORKPLACE ACT CERTIFICATION FOR A GRANTEE OTHER THAN AN INDIVIDUAL

1. The _____
(Name of Applicant for a Grant or Cooperative Agreement)
certifies that it will establish and continue to provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - b. Establishing an ongoing drug-free awareness program to inform employees about--
 1. The dangers of drug abuse in the workplace;
 2. The Applicant's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance programs; and,
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - c. Making it a requirement that each employee to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (a).
 - d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant or cooperative agreement, the employee will--
 1. Abide by the terms of the statement; and,
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
 - e. Notifying the Federal agency in writing, within ten (10) calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction, Employers of convicted employees must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.
 - f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--
 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
2. The Applicant's headquarters is located at the following address. The addresses of all workplaces maintained by the Applicant are provided on an accompanying list.

Name of Applicant: _____

(Signature of Authorized Official)

Address: _____

City: _____

(Title of Authorized Official)

County: _____

(Name of Applicant)

State: _____

Zip Code: _____

(Date)

Appendix D to Part 22—Certification Regarding Lobbying

CERTIFICATION REGARDING LOBBYING

FOR

CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 21, U.S. Code. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Organization: _____

Address: _____

City: _____

State: _____

Zip Code: _____

(Signature of Authorized Official)

(Title of Authorized Official)

(Date)

Appendix E to Part 22—Certification Regarding Debarment, Suspension

**OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION
U.S. DEPARTMENT OF TRANSPORTATION
SHORT TERM LENDING PROGRAM**

Certification Regarding Debarment, Suspension

This certification is required the Office of Budget and Management (OMB) Circular No. A-129, Revised, Policies for Federal Credit Programs and Non-Tax Receivables.

The participating lender certifies, by submission of this document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible from participation in a Government contract or delinquent on a Government debt.


Participating Lender Institution: _____

Date: _____

By: _____
Name and Title of Authorized Representative

Signature of Authorized Representative

Appendix F to Part 22—Bank Verification Extension Request Form

Office of Small and Disadvantaged Business Utilization SHORT TERM LENDING PROGRAM BANK VERIFICATION EXTENSION REQUEST FORM		
Request Date:	_____	
Participating Lender	_____	
Borrower	_____	
Loan Amount	\$	_____
DOT Guarantee Amount	\$	_____
Loan Guarantee expires this date:	_____	
Current Loan Balance:	_____	
As of date:	_____	
Extension Date Requested:	_____	
<small>(Note Participating Lenders may request an extension period no greater than 90 days from the original expiration date)</small>		
Reason for Extension Request:	_____	

Bank Representative (print)	_____
Signature	_____
Do Not Write Below - For Internal Use Only	
Date Received _____	STLP Loan Number _____

Attachment G to Part 22—Cooperative Agreement

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND [BANK]_____

1. Recital of Purpose

The principal purpose of this Agreement is to carry out the United States Department of Transportation (DOT)'s Short Term Lending Program (STLP), a loan guarantee program to enhance the lending opportunities for disadvantaged business enterprises (DBEs) and other certified small and disadvantaged businesses (SDBs) in order to increase the number of DBEs and SDBs that engage in transportation-related contracts and to strengthen the competitive and productive capabilities of the DBEs and SDBs that currently do business with DOT, its grantees, recipients, their contractors and subcontractors. This Agreement is not intended to and does not create any rights in third parties to receive loans or any other funds from [BANK] or DOT. All rights and obligations under the Agreement run only to the parties.

This Agreement is intended by the parties to be construed as a Cooperative Agreement, under 31 United States Code (U.S.C.), Section 6305, and shall be in no way construed as a procurement contract.

2. Authority

DOT is authorized under 49 U.S.C. 332, to develop support mechanisms, including financial assistance programs that will enable DBEs and SDBs to take advantage of transportation-related business opportunities. [BANK] is authorized under its charter and by-laws to enter into this Cooperative Agreement.

3. Definitions

3.1 For the purpose of this Agreement, the term "Disadvantaged Business Enterprise" ("DBE"), includes a for profit small business concern that is owned and controlled by a socially and economically disadvantaged individual, including women and, is set forth at 49 Code of Federal Regulations (CFR) (23 and 26); Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and corresponding sections of the Aviation Investment and Reform Act for the 21st Century, as amended by any regulations and interpretations issued

there-under. For the purpose of the Agreement, the term Small and Disadvantaged Business ("SDB") includes: Small disadvantaged business (SDB), Section 8 (a) program; HUBZONE Empowerment Contracting Program, and Service Disabled Veteran owned business, under the U.S. Small Business Administration.

3.2 For the purpose of this Agreement, the term "transportation-related contract" is defined as a contract for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation with any public or commercial provider of transportation through any Federal, State or local transportation agency. The transportation contract can be a prime contract or subcontract at any tier, awarded by DOT or by a State or local recipient of DOT funds.

3.3 For the purpose of this Agreement, the term "Participating Lender" (PL) is defined as a banking or lending institution, or other approved organization which has agreed to and has been formally accepted as a Participating Lender in the DOT Short-Term Lending Program.

4. Terms

4.1 The [BANK] shall make loans to qualifying DBEs and SDBs that request financial assistance to perform transportation-related contracts. The maximum loan face amount for any individual loan or line of credit will be \$750,000.00 unless the written consent of the Director, OSDBU, is received. Loans will be secured at a minimum by assignment of the proceeds of the transportation-related contracts supporting the loan request and by a recorded first lien security position in such proceeds. (See Section 11 regarding maintenance of DOT funds in a first lien position.) Other collateral may be required based upon assessments of risk and collateral availability performed by [BANK] and DOT.

4.2 The [BANK] agrees to review and give due consideration to all loan applications submitted directly by the applicant or forwarded by DOT. Generally DOT will refer the application to the Participating Lender located closest to the applicant; however, DOT may at its sole discretion forward applications to any Participating Lender.

4.3 DOT will guarantee up to seventy-five (75) percent of the outstanding and unpaid principal amount of the loan, interest on the principal amount of the loan, and interest on any due and unpaid amounts owing by the Borrower to the Bank, provided however that

the maximum liability of DOT shall not at any time exceed the guaranteed amount. In the event a DBE or SDB defaults on a loan made under this Agreement, the loss will be borne on the same pro rata basis of distribution.

4.4 The [BANK] agrees that in any and all matters concerning the DOT Short Term Lending Program it will conform to the policy and procedures as described in the DOT STLP Loan Policies and Procedures Manual and subsequent regulations implementing this manual. [BANK] and DOT will be responsible for decisions as to which DBE or SDB applicants will or will not receive loans. All decisions will require the final approval of the OSDBU Director, or the Director's designee, after the loan application has been recommended for approval by [BANK]'s loan committee or by its designated senior official. Funds shall be loaned at the Prime Rate that is defined as New York Prime and published daily in the Wall Street Journal, adjusted on the first day of each calendar month for the ensuing month. Up to an additional two (2) points can be added to the Prime Rate to cover administrative fees of managing the STLP Program.

4.5 The DBE or SDB borrower shall be able to make draws against the line of credit during the term of the loan and shall be required to repay all remaining principal and interest no later than the date of receipt of the final payment under its transportation-related contract(s). In the event that the contract is terminated for any reason, maturity of the loan will be accelerated and no further advances will be made.

4.6 The use of the two-payee check system will be required in which the [BANK] and the DBE or SDB will be the payees of any relevant check paid to the DBE or SDB for work performed under a secured transportation-related contract(s).

4.7 Application forms required for DOT guaranteed loans can be obtained from the Participating Lender, and are also available on the OSDBU webpage: <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>. Applications should be submitted directly to [BANK]. The [BANK] will perform the loan application review and process the loan for completeness. The [BANK] must initially approve or decline the loan based upon its independent review. Loans approved by the [BANK] will then be forwarded to DOT and will require the final approval of the OSDBU Director, or the Director's designee for a DOT guarantee. Questions regarding program eligibility and

policy will be referred to OSDBU for resolution. Any DBEs or SDBs rejected for a loan will be sent a letter of explanation, with a copy to OSDBU.

4.8 Determination that the final loan documents conform to the terms of the loan approval; that loan documentation is complete and has been properly executed; and that loan disbursement is completed is the sole right and responsibility of the [BANK]. The [BANK] will promptly close the loans in accordance with conditions specified by DOT in the transmittal of its approval and any other conditions upon which the DOT and the [BANK] may have agreed in writing. The [BANK] shall report the circumstances behind any loans not closed within 15 business days after receipt of final approval by OSDBU. The [BANK] must execute applications which have been finally approved by DOT and the [BANK] and must ensure the necessary completion and perfection of documents under standard banking practice and procedure. These documents will include as applicable; the note, assignment of payments, notice of assignment of payments, personal guaranties, necessary UCC filings, and any other collateral or security documents completed during the execution of the loan. Additionally, each borrower for which the DOT guarantee exceeds \$150,000 must execute a Certification Regarding Lobbying concurrent with execution of the closing documents. This certification is incorporated into this Cooperative Agreement as Attachment B.

4.9 The [BANK] will forward copies of all executed closing documents and filings to DOT no later than 15 business days after execution of closing documents and filings.

4.10 [BANK] may only release loan funds to a certified applicant (DBE or SDB, as defined in Section 3.1) upon the award of a transportation-related contract as determined by DOT.

4.11 [BANK] shall be in a first position on any contract proceeds and receivables that the STLP line has financed. STLP funds shall not be placed in a subordinate position to any other debt, except if so required by a DOT authorized surety bonding company and approved by the OSDBU Director, or his/her designee. It shall be the responsibility of the [BANK] to ensure that the security interests in the proceeds of any contract funded under this Agreement are properly recorded as minimum security for the loan. The [BANK] is also responsible for maintaining regular and sufficient contact with the borrower in order to monitor and ensure the progress of the project being financed and compliance with the terms of the financing, and to detect any material adverse change in the condition of the borrower, and shall be reported in the monthly report to OSDBU.

4.12 [BANK] may collect an application fee of \$150.00 from the applicant for each loan application or renewal.

4.13 For each loan successfully executed, DOT will pay [BANK] an underwriting fee of one (1) percent of the face amount of the approved loan with a minimum fee of not less than \$1,000.00 per approved loan. [BANK] can charge the applicant not more

than Prime plus two (2) percent for the interest rate on the loan. For total loan amounts of \$150,000.00 or less, the PL may charge an additional half (1/2) percent administration fee for the monitoring and technical assistance required. Payment of the underwriting fees will be made upon a written request for payment by the [BANK] and receipt by OSDBU of a copy of a signed loan activation form and a copy of the executed note.

4.14 [BANK] must fully fund each loan. If a second bank has participated in the loan, the distribution of the underwriting fee shall be negotiated by the banks.

4.15 DOT's guarantee shall be established by a Guarantee Agreement executed by the [BANK] and DOT for each new loan, loan modification, or loan renewal.

4.16 The [BANK] and DOT shall be jointly responsible for establishing collection procedures and shall exercise due diligence with respect to collection of delinquent debt. The [BANK] will be responsible for initiating actions to recover such debt. DOT must approve in writing any compromise of a claim, resolution of a dispute, suspension or termination of collection action, or referral for litigation. In an appropriate situation, DOT may authorize the [BANK] to undertake any legal action to collect unpaid loans and the DOT will reimburse [BANK] on a pro rata basis in proportion to the loan guarantee for the associated fees and costs with prior written authorization from the OSDBU Director. Should litigation become necessary, the Department of Justice shall be responsible for its conduct, and the [BANK] and DOT shall cooperate in providing evidence and other support to its efforts. Net recoveries applicable to principal and accrued interest shall be applied on a pro rata basis in proportion to the loan guarantee commitments.

4.17 The [BANK] shall maintain a fiduciary duty to administer all loans approved under STLP in a manner that is consistent with the terms of this Agreement and the procedures established thereunder.

5. Deliverables and Delivery Schedule

5.1 Within five (5) business days of the activation of a guaranteed loan, [BANK] will submit a completed and signed Loan Activation Form to OSDBU.

5.2 Within five (5) business days of the close-out or renewal of a guaranteed loan, [BANK] will submit a completed and signed Loan Close-out Form to OSDBU.

5.3 For loans in excess of \$100,000.000, a personal site inspection of the facilities of the loan applicant must be conducted by the [BANK] prior to disbursement of funds.

5.4 Monthly Reports. [BANK] shall provide a report by the 10th of each month covering the previous month's activity, according to the attached templates (Attachments C1 and C2). The report will include: (a) A status of the review of all pending applications; (b) a summary of loans executed and outstanding, including the borrowers' name, loan amount, maturity date, balance outstanding, and accrued interest; (c) a statement for each loan as to whether the loan is current and performing satisfactorily; (d) for each loan determined delinquent and

not performing properly, a summary of action taken; and, (e) the date(s) of any loans that have closed out; and, (f) any relevant information that DOT may request.

5.5 Call Reports or Thrift Financial Reports. [BANK] shall provide two copies of its quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council—FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision—OTS Form 1313) within 60 days after the close of each calendar quarter.

5.6 Regulatory Enforcement Actions. The [BANK] shall promptly notify the OSDBU Director, of any regulatory enforcement actions involving the Bank.

5.7 Community Reinvestment Act (CRA). [BANK] shall provide the OSDBU Director a copy of its current CRA rating and shall promptly advise of any negative changes thereto. Delivery of all items or other notices or correspondence relevant to this Agreement shall be addressed as follows: Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 1200 New Jersey Avenue SE, S-40, W56-497, Washington, DC 20590.

5.8 The PL shall notify OSDBU within 10 (ten) business days of any personnel changes regarding signatory officials of the PL, as well as any significant occurrences within the PL's organization which may affect this agreement, such as mergers, buyouts, or expansions.

6. Audit, Investigation and Review

DOT's Inspector General and the Comptroller General of the United States and/or Director, OSDBU, or Director's designee may at all reasonable times investigate, audit and review in the offices of [BANK]. [BANK] shall provide to such parties access to all documents, papers, books, and records relevant to such audit or review.

7. Record Retention

The [BANK] shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of this Agreement for a period of not less than three years from the date of termination of this Agreement or payment in full from the borrower; except, if any litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

8. Duration of Agreement

This Agreement shall be in effect for a period of two (2) years from the date of the execution of this Agreement. An annual option to renew the Agreement for additional periods, not to exceed two (2) years, may be granted at the discretion of DOT.

9. Expiration of Agreement

Except in the event that DOT has offered its annual option to renew this Agreement for additional periods and the [BANK] has accepted such an offer, after expiration of this Agreement, no further applications will be furnished by DOT for approval. Unless instructed otherwise by DOT, after expiration of the Agreement, [BANK] shall complete the

documentation of any loans which have been recommended to DOT for approval and in which DOT has given final approval prior to expiration of the Agreement. Following expiration of the Agreement, [BANK] may, subject to the written concurrence of DOT, sell its loans to another bank or to another Participating Lender which shall assume the original [BANK]'s rights and responsibilities to fund, service and collect the loan or loans.

10. Suspension of Agreement

DOT may suspend this Agreement by giving a Notice of Suspension in writing to [BANK] and by instructing [BANK] in writing not to disburse funds (including the granting of additional loans and the making of loan commitments), pending [BANK]'s action to correct violations of the terms and conditions of this Cooperative Agreement. Failure by [BANK] to take corrective actions specified in the Notice of Suspension within thirty (30) days of the date of receipt of said notice may result in termination of the Agreement.

11. Termination

11.1 DOT Termination for Cause. DOT may terminate this Cooperative Agreement, in whole or in part, at any time before the expiration of the one year term of the Agreement or the expiration of any renewal term of the Agreement, and without affording a thirty (30) day cure period under the Suspension provision, if it determines that the [BANK] failed to comply with terms and conditions of the Agreement and such failure cannot be reasonably addressed. DOT shall promptly notify [BANK] in writing of the determination and the reasons for the termination, together with the effective date of termination.

11.2 DOT Termination for Convenience. DOT may terminate this Cooperative Agreement for the convenience of the Government and without cause, upon prior written notice of thirty (30) days to [BANK] of DOT's intention to terminate. Upon termination, DOT shall remain liable on the pro rata share of the loan guarantee(s) made by [BANK], which have been finally approved by DOT prior to the effective date of termination.

11.3 Bank Termination. [BANK] may terminate the Agreement with written notice of sixty (60) days to DOT of [BANKS]'s intention to terminate. Upon termination, DOT shall remain liable only as to loan guarantee(s) written by [BANK] which have been approved by DOT, prior to the effective date of termination.

12. DOT's Representative

The Director, OSDDBU, shall represent DOT under the Agreement and may exercise all rights secured to DOT by the Agreement. Decisions by the Director to exercise DOT's rights under this Agreement shall be final and binding on DOT. The Director may delegate these responsibilities to any other DOT employee on written notice to [BANK].

[BANK'S REPRESENTATIVE] shall represent [BANK] under the Agreement and may exercise all rights secured to [BANK] by the Agreement. Decisions by this representative to exercise [BANK]'s rights under this Agreement shall be final and binding on [BANK]. [BANK] may delegate

these responsibilities to any other [BANK] employee upon written notice to DOT. [BANK]'s address for receipt of notices and other correspondence for the purpose of this Agreement will be:

13. Miscellaneous Conditions

13.1 As a condition of receipt of any DOT guarantee under the Agreement, [BANK] assures DOT that they will abide by the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and DOT's implementing regulations, 49 CFR 21; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and DOT's implementing regulations, 49 CFR 27; the Age Discrimination Act of 1975, 42 U.S.C. 6101-7, and any Federal implementing regulations; and Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 803 (re-codified in 49 U.S.C. 332). [BANK] also assures DOT that they will comply with all other applicable Federal laws and regulations.

13.2 In order to enter into this Agreement, [BANK] shall be designated as a depository and financial agent of the Government under 31 CFR Part 202.

13.3 All notices, approvals, reports, or other correspondence contemplated by this Agreement must be in writing and served personally, by facsimile, by e-mail, or by first class mail. If given by personal service, the notice shall be effective on the date of delivery; if given by mail, the notice shall be effective upon receipt. Either party may change its mailing address by giving notice of such change.

13.4 [BANK] shall execute a Drug-Free Workplace Act certification concurrent with execution of this Cooperative Agreement.

13.5 [BANK] shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of DOT loan guarantee, a copy of which must be made available to DOT upon request. No employee, officer or agent of the [BANK] shall participate in the selection, or in the award or administration of a contract supported by DOT funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent,
- Any member of his or her immediate family,
- His or her partner, or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

[BANK]'s officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from loan applicants or potential applicants, or parties applying for any DOT short term loans. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by [BANK] agents.

13.6 In accordance with Section 319 of Public Law 101-121, [BANK] shall be prohibited from using Federal appropriated funds for lobbying the Executive or

Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan and shall disclose lobbying activities. [BANK] shall execute a Certificate Regarding Lobbying concurrent with execution of this Cooperative Agreement.

13.7 This document embodies the entire Agreement between [BANK] and DOT. This Agreement may be amended, altered, or any of its provisions waived only in writing and signed by both parties.

This Cooperative Agreement is entered into this ____ day of _____, 20____, by the United States Department of Transportation at Washington, District of Columbia.

By: _____
Director, Office of Small and Disadvantaged Business Utilization
U.S. Department of Transportation

This Cooperative Agreement is entered into by [BANK] and in witness whereof, the undersigned has caused the signature of its officer below-named and its corporate seal duly attested to be affixed hereto this ____ day of _____, 20____, intending to be legally bonding hereby.

[BANK]
(SEAL)
(Bank ABA/RTN#) _____ / _____
By: _____
Title: _____

Appendix H to Part 22—Guarantee Agreement

DEPARTMENT OF TRANSPORTATION OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION SHORT TERM LENDING PROGRAM

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT dated as of [DATE] (this Agreement) is made by the United States Department of Transportation (DOT) and [NAME OF BANK], a National Banking Corporation, its successors and permitted assigns [NAME OF BANK] concerning the Bank's extension of a [AMOUNT OF LOAN/WORDS] (\$LOAN AMOUNT) Loan (Loan) to [NAME OF BORROWER], [STATE IN WHICH INCORPORATED] Corporation, (Borrower).

Section 1. Guarantee

1.01 *The Guarantee.* Subject to the terms and conditions set forth in this Agreement, DOT hereby guarantees, irrevocably and unconditionally (except to the extent expressly provided in Sections 1.02, 1.03, 1.04, 1.05 or by applicable law) to the Bank payment of seventy five percent (75%) of the outstanding and unpaid principal amount of the loan, interest on the principal amount of the loan and interest on any due and unpaid amounts owing by the Borrower to the Bank, provided however that the maximum liability of DOT shall not at any time exceed [GUARANTEE AMOUNT/WORDS], the Guaranteed Amount.

1.02 *Coverage of the Guarantee and Compliance with STLP Cooperative Agreement and STLP Policies and Procedures Manual.*

(a) The Guarantee is entitled to the full faith and credit of the United States of America. The Guarantee constitutes a guarantee of payment and not of collection. In no event shall the liability of the DOT on the Guarantee exceed the Guaranteed Amount.

(b) If the [NAME OF BANK] fails to comply with this Guarantee Agreement and STLP Cooperative Agreement and STLP Policies and Procedures Manual in the making or servicing of any STLP loan, the Guarantee shall not be effective and shall automatically terminate. Denial of liability on the Guarantee shall only occur if DOT determines that the [NAME OF BANK] has engaged in negligence, misconduct, or failed to comply with this Guarantee Agreement the STLP Cooperative Agreement, or STLP Policies and Procedures Manual.

1.03 *Term of the Guarantee.* The Guarantee will be effective for one year from the Date of Activation of the Loan. Any requests for renewals or extensions of the expiration date must be sent by the [NAME OF BANK], in writing, to the DOT no later than thirty (30) days prior to the original expiration date. Renewal periods of one year may be considered; however, they will be handled as a new loan guaranty request. Extension periods up to ninety (90) days may be granted with reason and at the DOT's sole discretion incorporating any addendums that contain conditions on the loan approval. If a renewal is not in place by the end of the 90 day extension, the Guarantee will expire on the last day of the extension period. It is further agreed that all principal advances made to the Borrower by [NAME OF BANK] in accordance with Paragraph 1.02 (b.) and prior to the Expiration Date will be guaranteed by the DOT until collected.

1.04 *Timely Demand.* In the event that the [NAME OF BANK] fails to make demand on DOT within the time period required in Section 2.02(vi), the Guarantee of the unpaid installment of principal and/or interest as to which such timely demand was not made shall automatically terminate with respect thereto. This termination shall be without prejudice to the right of the [NAME OF BANK] to make demand on DOT under this Agreement in respect of any other due and unpaid installment(s) of principal or interest.

1.05 *Prohibited Amendment or Transfers.* In the event that the Bank, without DOT's prior written consent, agrees to any material amendment, modification, or waiver or assigns, conveys, sells, or otherwise transfers any interest in or right or obligation under this Agreement or the Loan, or any Note, then DOT shall have the right to terminate the Guarantee by providing written notice to the Bank.

1.06 *No Acceleration.* In the event that, without the prior written consent of DOT, the Bank declares all or any part of the Borrower's indebtedness under the Loan to be immediately due and payable or to be due and payable upon the demand of the Bank, then DOT shall have the right to terminate the Guarantee with respect to all or a portion of the Guaranteed Amount. The automatic acceleration of the Loan or any Note as a result of a bankruptcy or insolvency event does not constitute such an event. Any termination of the Guarantee by DOT shall be deemed effective as of the date of the declaration by the Bank.

Section 2. Claim Procedures

2.01 *Failure to Pay.* In the event that (i) the Borrower for any reason fails to pay in full any installment of principal (other than any proposed voluntary prepayment) or interest under the Loan or any Note for more than thirty (30) calendar days after the due date of such installment; and (ii) a period of fifteen (15) calendar days has elapsed since written demand for payment was made by the Bank on the Borrower (which demand may be omitted only if and to the extent that the making thereof would be prohibited by any applicable law), then the Bank may make demand on DOT under this agreement for payment (subject to Sections 1.03., 1.04, 1.05) of the Guaranteed Amount.

2.02 *Demand on DOT.* The Bank's demand on DOT must: (i) Be in writing; (ii) be made only by the Bank; (iii) identify the installment(s) of principal and/or interest unpaid as of the date of such demand; (iv) include a copy of the Bank's written demand for payment on the Borrower (or in the event that such demand was omitted in accordance with law, evidence of the applicable law); (v) include an Assignment and Certification in the form of Annex A; (vi) be made not later than sixty (60) calendar days from the due date of the unpaid installment(s) of principal and /or interest on which the Bank's demand for payment is based.

2.03 *Assignment to DOT.* On and as of the date on which DOT pays the Guaranteed Amount, DOT shall become subrogated to, and the Bank shall be deemed to have assigned to DOT, without recourse and without need for any further action, the Guaranteed Percentage of the Bank's right, title, and interest in and to the principal of and interest on the Loan and each Note in respect thereof and to such extent, DOT shall have the right to enforce or participate in any claim (including without limitation, any claim in bankruptcy), right or remedy that the Bank then has or may thereafter acquire against the Borrower under the Loan or the Note. In addition to the Assignment and Certification required, the Bank shall, upon request by DOT, promptly execute and deliver such documents and take such other actions as DOT may reasonably request to evidence or give effect to such subrogation and assignment, it being understood and agreed that the execution and delivery of any such document or the taking of any such action shall not be a condition to DOT's obligation to pay the Guaranteed Amount.

2.04 *Payment by DOT.*

(a) Within forty-five (45) Business Days after the date on which the Bank shall have properly documented its demand on DOT for payment pursuant to Section 2.02 (the "Demand Date"), the DOT shall, subject to Sections 1.03, 1.04 and 1.05, pay the Guaranteed Amount to the Bank in a single payment calculated as of the date of actual payment thereof by DOT.

(b) Payment of the Guaranteed Amount due under this Agreement shall be made by DOT to the Bank, and such payment to the Bank shall discharge fully and completely DOT's liability under this Agreement. After the Demand Date, any funds received by the Bank or DOT from or on behalf of the Borrower in respect of any of the Borrower's obligations under the Loan Agreement or

Note shall be applied in accordance with the terms of the Loan Agreement or Note.

2.05 *DOT Payment Does Not Discharge Borrower.* Any statute or judicial decision to the contrary notwithstanding, no payment by DOT to the Bank under this Agreement shall be deemed to reduce, discharge, satisfy or terminate any obligation of Borrower under the Loan Agreement or any Note.

Section 3. Miscellaneous

3.01 *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA IF AND TO THE EXTENT SUCH FEDERAL LAW IS APPLICABLE, AND OTHERWISE IN ACCORDANCE WITH THE LAW OF THE STATE OF [STATE WHERE BANK LOCATED].

3.02 *Benefit of Agreement.* This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.

3.03 *Entire Agreement.* This Agreement contains the entire agreement among the parties hereto regarding the subject matter hereof. In the event that any term of the Loan Agreement or any Note conflicts with any term of this Agreement, the terms and provisions of this Agreement shall control to the extent of such conflict.

3.04 *Amendment or Waiver.* This Agreement may not be changed, discharged or terminated (except as expressly provided herein) without the written consent of the parties hereto, and no provision hereof may be waived without the written consent of the party to be bound thereby.

3.05 *Counterparts.* This Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

3.06 *Severability.* To the extent permitted by applicable law, the illegality or unenforceability of any provision of this Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in duplicate, this [DAY] of [MONTH], [YEAR].

[NAME OF BANK]

United States Department of Transportation

[NAME OF OFFICIAL]

[TITLE OF OFFICIAL]

Annex A—Form of Assignment and Certification

This Assignment and Certification is made pursuant to the terms of the Guarantee Agreement dated as of [DATE] (the "Agreement") between the United States Department of Transportation (DOT) and [NAME OF BANK], a National Banking Corporation (Bank). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned in the Agreement.

1. *Assignment.* For value received, the Bank hereby assigns to DOT, without recourse, all of its right, title and interest in and to the principal of and interest on the Loan and under the Loan Agreement and each Note in respect thereof, to the extent, and only to the extent, of the Bank's Guaranteed Percentage of the Loan represented by the Guaranteed Amount paid by DOT to the Bank.

2. *Certifications.* The Bank hereby certifies that (a) the Guaranteed Amount demanded to be paid by DOT to the Bank is properly calculated and due and owing to the Bank under the terms of the Agreement and (b) it has not, without the prior written consent of DOT:

- (i) Agreed to any material amendment, written modification or written waiver in violation of Section 1.04 of the Agreement; or
- (ii) Assigned, conveyed, sold or otherwise transferred any interest in or right or obligation under this Agreement, or any Note

in violation of Section 1.05 the Agreement; or

(iii) Accelerated or caused the Agent to accelerate all or any part of the Loan or any Note in violation of Section 1.06 of the Agreement;

3. *Acknowledgment.* The Bank acknowledges and agrees that this Assignment and Certification is subject to the terms of the Agreement, including, without limitation, the following:

(a) Any funds received by the Bank or DOT from or on behalf of the Borrower in respect of any of the Borrower's obligations under the Loan Agreement or Note shall be applied in accordance with the terms of the Loan Agreement or Note.

(b) The Bank shall, upon request by DOT, execute and deliver such documents and take such other actions as DOT may reasonably request to establish, preserve or enforce the rights, title and interest of DOT in, to and under the Loan Agreement and each Note, and any right or remedy that DOT has or may

acquire against the Borrower thereunder, it being understood and agreed that the execution and delivery of any such document or the taking of any such action shall not be a condition to DOT's obligation to pay the Guaranteed Amount.

IN WITNESS WHEREOF, the Bank has caused this instrument to be duly executed and delivered this [DAY] of [MONTH], [YEAR].

By: _____

(Signature)

(SEAL) Name: _____

(Print)

Attest _____

Title: _____

Secretary

[NAME OF BANK]

[FR Doc. E8-19049 Filed 8-20-08; 8:45 am]

BILLING CODE 4910-9X-C