(b) A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a Lender or Holder has actual knowledge at the time it becomes such Lender or Holder or which a Lender or Holder participates in or condones. In addition, the guarantee will be unenforceable by the Lender or the Holder to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Administrator acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FRA in its guarantee.

(c) The Administrator may guarantee an Applicant's obligation to any Lender provided such Lender can establish to the satisfaction of the Administrator that it has the legal authority and sufficient expertise and financial strength to operate a successful lending program. Loan guarantees will only be approved for Lenders with adequate experience and expertise to make, secure, service, and collect the loans.

(d) The Lender may sell all of the guaranteed portion of the loan on the secondary market, provided the loan is not in default, or retain the entire loan.

(e) When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the Lender under the loan guarantee to the extent of the portion purchased. The Lender will remain bound to all obligations under the loan guarantee and the provisions of this part. In the event of material fraud, negligence or misrepresentation by the Lender or the Lender's participation in or condoning of such material fraud, negligence or misrepresentation, the Lender will be liable for payments made by the Agency to any Holder.

§ 260.53 Lenders' functions and responsibilities.

Lenders have the primary responsibility for the successful delivery of the program consistent with the policies and procedures outlined in this part. All Lenders obtaining or requesting a loan guarantee from the Administrator are responsible for:

(a) *Loan processing*. Lender shall be responsible for all aspects of loan processing, including:

(1) Processing applications for the loan to be guaranteed;

(2) Developing and maintaining adequately documented loan files;

(3) Recommending only loan proposals that are eligible and financially feasible;

(4) Obtaining valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervising construction, where appropriate;

(6) Distributing loan funds;

(7) Servicing guaranteed loans in a prudent manner, including liquidation if necessary; and

(8) Obtaining the Administrator's approval or concurrence as required in the loan guarantee documentation;

(b) *Credit evaluation*. Lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The Lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures;

(c) *Environmental responsibilities*. Lender has a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lender must alert the Administrator to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lender must assist borrowers as necessary to comply with the environmental requirements outlined in this part. Additionally, Lender will assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems;

(d) *Loan closing*. The Lender will conduct or arrange for loan closings; and

(e) *Fees and Charges*. The Lender may establish charges and fees for the loan provided they are similar to those normally charged other Applicants for the same type of loan in the ordinary course of business.

§ 260.55 Lender's loan servicing.

(a) The lender is responsible for servicing the entire loan and for taking all servicing actions that are prudent. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the loan documents, obtaining and analyzing financial statements, verification of tax payments, and insurance premiums, and maintaining liens on collateral.

(b) The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually.

(c) At the Administrator's request, the Lender will periodically meet with the Administrator to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan documents are being enforced.

(d) The Lender must obtain and forward to the Administrator the Borrower's annual financial statements within 120 days after the end of the Borrower's fiscal year and the due date of other reports as required by the loan documents. The Lender must analyze the financial statements and provide the Agency with a written summary of the Lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the Borrower.

(e) Neither the Lender nor the Holder shall alter, nor approve any amendments of, any loan instrument without the prior written approval of the Administrator.

PART 261—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

AUTHORITY: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.49.

SOURCE: 64 FR 29753, June 2, 1999, unless otherwise noted.

§ 261.1 Cross-reference to credit assistance.

The regulations in 49 CFR Part 80 shall be followed in complying with the requirements of this part. Title 49, CFR, Part 80 implements the Transportation Infrastructure Finance and Innovation Act of 1998, secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241.

PART 265—NONDISCRIMINATION IN FEDERALLY ASSISTED RAILROAD PROGRAMS

Subpart A—General

Sec.
265.1 Purpose.
265.3 Applicability.
265.5 Definitions.

Subpart B—Requirements

265.7 Nondiscrimination clauses.
265.9 Affirmative action program—General.
265.11 Submission of affirmative action program.
265.13 Contents of affirmative action program.
265.14 Determining the MBE status of a business.
265.14–1 Appeals of determination of MBE status.
265.15 Implementation and maintenance of affirmative action program.
265.17 Review of affirmative action program.

Subpart C—Compliance

265.19 Compliance information.
265.21 Conduct of investigations.
265.23 Procedures for effecting compliance.
265.25 Other information.
APPENDIX A TO PART 265

AUTHORITY: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94–210, 90 Stat. 31; regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

SOURCE: 42 FR 4286, Jan. 24, 1977, unless otherwise noted.

Subpart A—General

§ 265.1 Purpose.

The purpose of this part is to effectuate the provisions of section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 (hereinafter