

POLICY QUESTIONS

Raised by Comments on July 4, 1944 Drafts of Termination Guarantee and Loan Agreements

1. Administration of Loan. - The guarantee agreement gives the Financing Institution the right to require the Guarantor to take over the administration of the loan only in the event of a voluntary purchase by the Guarantor. Should section 5 of the agreement be amended to provide that in any case in which the Guarantor has become the purchaser of fifty per cent or more of the obligation, the Financing Institution shall have the option of requiring the Guarantor to assume the administration of the loan? (See comment (27)).

2. Step-up of Guaranteed Percentage on Failure of Guarantor to Sue. - If the Guarantor disagrees with the action of the Financing Institution in suing or failing to sue on the loan, it may itself take over the administration of the loan by voluntary purchase under section 4; but the Financing Institution has no corresponding protection in the event of its disagreement with the actions of the Guarantor. Should provisions similar to those of sections 12 and 13 of the April 6, 1943 form of guarantee agreement be included in the revised draft so that the Financing Institution could obtain a 100% guarantee in the event of the Guarantor's refusal to sue or consent to suit or upon its refusal to accelerate the maturity of the loan? (See comment (30)).

3. Cross-Lien Provisions. - Should the guarantee agreement include provisions like those of section 10(B) of the April 6, 1943 form with respect to the sharing of the proceeds of collateral received by the Guarantor? (See comments (61) and (62)).

4. Objection to Contracts Added to Exhibit C. - Should the right of the Borrower to add terminated war contracts to Exhibit C be subject to the prior approval of the Financing Institution or should the Financing Institution merely have the right to object? Should the Guarantor have the right to object or merely the right to concur in the Financing Institution's objection? How much time should the Financing Institution and the Guarantor be allowed in which to act? In any event, should there be some provision prohibiting the addition of nonassignable contracts? (See comments (72), (73), (76), (79) and (82)).

5. Optional Assignment of Collateral. - Should paragraph 5 of the loan agreement provide for optional, instead of mandatory, assignment of contracts? If this is desired, the following provision might be substituted for the first two sentences of paragraph 5:

"Prior to any borrowing hereunder, or at any time thereafter, upon request of the Financing Institution or the Guarantor, the Borrower will assign to the Financing Institution as security for the loan all moneys due and to become due on such of the Borrower's terminated war contracts as are specified in such request and as the Borrower by using its best efforts can assign."

(See comments (120), (123), (126), (131) and (133)).

(Over)

6. Pledge of Termination Inventory for Unguaranteed Side Loans. - In the event that a Financing Institution has made an unguaranteed production loan to the Borrower on the security of live contracts and such contracts are later terminated, should the side loan be permitted to continue along with a guaranteed termination loan? As now worded, the last sentence of paragraph 5 of the loan agreement prohibits the Borrower from suffering termination inventory to be encumbered for more than _____ days, except as provided in Exhibit D. Consequently, Exhibit D, in exceptional cases, might contain provisions expressly permitting the encumbrance of termination inventory in cases of this kind. The possibility of such a provision in Exhibit D may result in additional negotiations, and for this reason the present provision may be objectionable. Also involved is the question as to the degree of discretion which the Services will exercise in permitting such a provision. (See comments (57), (122) and (133)).

7. Failure of Borrower to File Claim within 120 Days. - Under the Loan Formula Certificate the Borrower is prohibited from borrowing on any contract as to which he has not filed claim within 120 days from the effective date of termination, even though he files such a claim after the expiration of that period. Is it intended that the Borrower shall be forever prohibited from borrowing on such a contract? (See comments (229), (235), (271) and comments 3 and 4 of Harris Trust and Savings Bank, Chicago, Illinois.)

8. Commitment Fee. - What should be the maximum commitment fee? Seven of the Federal Reserve Banks favor $1/4$ of 1% with the entire amount retained by the Financing Institution; five Federal Reserve Banks favor $1/2$ of 1% shared with the Guarantor. Comments from the commercial banks indicate that the maximum of $1/2$ of 1% is favored by fourteen banks and the maximum of $1/4$ of 1% by four banks. (See comments (272)-(305)).

9. Simplicity of Procedure. - To what extent should instructions provide for expediting the consummation of termination guarantees? The fear is expressed that the procedure for making termination guarantees will be too complicated; and it is suggested that such guarantees should not be made upon a credit basis and that the standard loan agreement should represent the maximum as well as the minimum requirements of the Government. (See comments (11) and (65)).

10. Spheres of Use. - It is suggested that the scope and permissive use of V loans, V-T loans, and T loans should be clearly defined. (See comment (15)).

11. Use of a Single Form. - Could the April 6, 1943 form, with certain necessary modifications, be used for both V loans and T loans? As an alternative could the proposed draft of termination guarantee agreement, with certain modifications, be used for V loans as well as T loans? (See comment 17)).