

Credit Council Guidelines for the Use of Advisors External to the Department for Title XI Applications

A March 27, 2003, Audit Report on the Title XI Loan Guarantee Program by the DOT Inspector General stated that the Title XI “loan review process would benefit from the use of additional external review using contract resources, especially for applications involving large loan amounts, requiring modifications to the approval criteria, or involving complex, novel, or new technologies.” In response to the March 27th Audit Report, MARAD implemented a requirement that all new and pending Title XI applications would undergo a review by an advisor external to the Department. Subsequently, in conference report language for the 2004 DOD Authorization Act (attached), Congress directed that MARAD should not hire external advisors for all Title XI applications.

In light of the conference report language, guidelines are needed for the use of advisors external to the Department to review Title XI applications. The Credit Council believes that the need for advisors external to the Department for the Title XI program generally falls into one of two groupings:

Applications that require review by an advisor external to the Department. An external advisor will be used when at least one of the following four criteria are met: (1) the applicant has less than five years operating experience, (2) the service will be in a new market and/or service area, (3) the project involves unproven technology, or (4) approval of the project would necessitate a modification to standard Title XI qualifying financial requirements that would increase risk to the Government.

Applications where the need for review by an advisor external to the Department is a matter of judgment. An external advisor may be used to review Title XI applications meeting at least one of the following five criteria: (1) the applicant or any corporate affiliate has previously defaulted on Title XI or non-Title XI debt, (2) the company’s financial condition has not be stable during the past three years, (3) a non-conventional financial and /or ownership structure is proposed, (4) the requested Title XI financing is in excess of \$100 million, or (5) approval of the application will result in more than 17 percent of the Title XI debt concentrated with one borrower. (17 percent is the maximum concentration of any single Title XI borrower to date.)

The Credit Council places the primary responsibility for determining the need for review by an external advisor with the Title XI program manager and the Departmental financial advisor assigned to the project. For those projects determined not to require an external advisor, documentation of the rationale should be included in the project file. As recognized by the conference report language, it may be that only certain aspects of an application require external review as opposed to the entire application.

On a case-by-case basis, the determination of the use of an external advisor may take into account additional factors, such as the qualifications of the company’s management, the percent of a company’s debt that is Title XI guaranteed, or the concentration of the Title XI portfolio in a particular market or service area. If there are any questions as to whether an advisor external to the Department should or should not be retained, guidance should be sought in writing from the Credit Council Chair.