

corrected or to show good cause for not doing so, or the State regulatory authority has not provided the authorized representative with a response. After receiving a response from the State regulatory authority, but before a Federal inspection, the authorized representative will determine in writing whether the standards for appropriate action or good cause have been satisfied. A State regulatory authority's failure to respond within ten days does not prevent the authorized representative from making a determination, and will constitute a waiver of the State regulatory authority's right to request review under paragraph (b)(1)(iii) of this section. Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.

* * * * *

(3) Appropriate action includes enforcement or other action authorized under the approved State regulatory program to cause the violation to be corrected.

(4) * * *

(ii) The State regulatory authority has initiated an investigation into a possible violation and has determined that it requires an additional amount of time to determine whether a violation exists. The State regulatory authority may request up to 30 additional days to complete its investigation of the issue; in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation. In all circumstances, an extension request must be supported by an explanation of the need for, and the measures being undertaken that justify, an extension, along with any relevant documentation. The authorized representative has discretion to approve the requested time extension or establish the length of time that the State regulatory authority has to complete its investigation. The sum total of additional time for any one possible violation must not exceed 90 days. At the conclusion of the specified additional time, the authorized representative will re-evaluate the State regulatory authority's response, including any additional information provided;

(iii) OSMRE has identified substantively similar possible violations on separate permits and considers the possible violations as a single State regulatory program issue addressed

through § 733.12. Previously identified possible violations that were the subject of ten-day notices or subsequent, substantively similar violations may be included in the same State regulatory program issue;

* * * * *

(b)(2) An authorized representative will have reason to believe that a violation, condition, or practice referred to in paragraph (b)(1)(i) of this section exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, support the existence of a possible violation, condition, or practice. In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE is notified of the possible violation, and publicly available electronic information. All citizen complaints will be considered as requests for a Federal inspection under § 842.12. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.

* * * * *

■ 7. Revise § 842.12(a) to read as follows:

§ 842.12 Requests for Federal inspections.

(a) Any person may request a Federal inspection under § 842.11(b) by providing to an authorized representative a signed, written statement (or an oral report followed by a signed, written statement) setting forth information that, along with any other information the complainant chooses to provide, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists. In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE receives the request for a Federal inspection, and publicly available electronic information. The statement must also set forth a phone number, address, and, if available, an email address where the person can be contacted. All citizen complaints under § 842.11(b) will be considered as requests for a Federal inspection. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.

* * * * *

[FR Doc. 2023-08370 Filed 4-24-23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket Number MARAD-2023-0086]

RIN 2133-AB98

Amendment to the Federal Ship Financing Program Regulations; Financial Requirements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document serves to inform interested parties and the public that the Maritime Administration (MARAD) proposes to amend its regulations implementing the Federal Ship Financing Program's (Title XI Program) financial requirements. This action is necessary to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors to align with more up-to-date vessel financing and federal credit best practices. MARAD solicits written comments on this rulemaking.

DATES: Written comments are requested on or before June 26, 2023.

ADDRESSES: Your comments should refer to DOT Docket Number MARAD-2023-0086 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Search "MARAD-2023-0086" and follow the instructions for submitting comments.
- *Email:* Rulemakings.MARAD@dot.gov. Include "MARAD-2023-0086" in the subject line of the message.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m. E.T., Monday through Friday, except on Federal holidays.

You may view the public comments submitted on this rulemaking at www.regulations.gov. When searching for comments, please use the Docket ID: MARAD-2023-0086. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.FederalRegister.gov and the Government Publishing Office's website at www.GovInfo.gov.

Note: If you mail or hand-deliver your input, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand-delivery, they must be submitted in an unbound format, no larger than 8½ by 11 inches, single-sided, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (“RIN”) for this rulemaking. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

To avoid duplication, please use only one of the above methods. See the “Public Participation” section below for instructions on submitting comments, including collection of information comments, if any, for the Office of Information and Regulatory Affairs, Office of Management and Budget. Unless there is a request for confidential treatment, all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David M. Gilmore, Director, Office of Marine Financing, at (202) 366–5737, or via email at marinefinancing@dot.gov. You may send mail to Mr. Gilmore at Department of Transportation, Maritime Administration, Office of Marine Financing, 1200 New Jersey Avenue SE, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation, through MARAD, is authorized to provide guarantees of debt (obligation guarantees) to finance all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. The Title XI Program is a loan guarantee program, administered by MARAD, which was established under Title XI of the Merchant Marine Act, 1936, Public Law 74–835, codified at 46 U.S.C. Chapter 537, as amended (the “Act”). Title XI provides for the full faith and credit of the United States, acting by and through the Maritime Administrator, for the

payment of debt obligations for: (1) U.S. shipowners for the purpose of financing or refinancing U.S. flag vessels constructed, reconstructed, or reconditioned in U.S. shipyards; and (2) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately-owned shipyard facility located in the U.S. As the Title XI Program guarantees full payment of the obligation’s unpaid principal and interest in the event of a default by the borrower, both the statute and regulations contain several criteria and requirements intended to reduce the risk of a loan default. Though the Title XI Program regulations have been amended over the years, the current financial requirements and limitations remain substantially the same as when MARAD introduced them in 1978. As lending practices have evolved, MARAD’s regulatory standards have not changed to reflect modern lending practices for vessel financing. For example, when the regulations were implemented, certain leases were not included as an expense under generally accepted accounting principles (GAAP), but today GAAP requires that all leases be included as an expense. Today, retained earnings are also expected to be included in any calculation of equity or net worth pursuant to GAAP. Accordingly, the proposed modifications to the regulations will eliminate confusion and align the Title XI Program regulations with modern accounting standards.

Prior to execution of a guarantee, MARAD is bound by statute to, among other things, make determinations of economic soundness of the project and the financial and operating capability of the applicant. To that end, the Title XI regulations currently require each borrower, and operator if applicable, to have and maintain: (1) working capital of at least \$1; (2) at least 90 percent of its equity as shown on the last audited balance sheet; and (3) long-term debt not to exceed twice its equity. By this notice of proposed rulemaking, MARAD proposes to modernize its financial review process by removing static financial covenants and loan thresholds and replacing them with a review and evaluation of the creditworthiness of each borrower based on revenue metrics based on federal credit and maritime lending best practices. The use of these revenue metrics is intended to improve the quality of MARAD financial requirements applied to new borrowers. As part of its regular programmatic evaluation process, MARAD frequently seeks feedback from potential applicants

and borrowers on its processes. Potential applicants have advised MARAD that the challenges caused by the regulatory requirements are a reason why they will not use the program. Borrowers also have cited the incompatibility of Title XI debt financial covenants with the other lender covenants as an obstacle in the prompt processing and approval of loan guarantee applications.

The “National Defense Authorization Act for Fiscal Year 2020,” (Pub. L. 116–92; December 20, 2019) (“NDAA 2020”) established the Federal Financing Bank as the “preferred lender” for the Title XI Program. Additionally, the NDAA 2020 directed MARAD to periodically review Title XI application procedures and documents to assure they “meet current commercial best practices to the extent permitted by law.” The 2020 NDAA also provided that MARAD establish a process for expedited consideration of low-risk applications which would “utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries.” As a result, MARAD identified best practices from federal credit programs that make loans and obligation guarantees similar to the Title XI Program. MARAD considered a review of federal credit practices that identified the Title XI Program was the only program with regulatorily-imposed financial covenants and thresholds.¹ This deviation from federal credit best practices was highlighted as a significant hinderance to the Title XI Program’s ability to tailor the terms of credit assistance to address the characteristics of a specific project.

Restrictions on the flexibility of the program limit the program’s ability to succeed. Reliance on the current static metrics and limited amortization requirements prevent the Title XI Program from adjusting its financial terms and conditions and debt amortization when best credit practices would recommend otherwise. The proposals are intended to attract a higher volume of high-quality applicants and mitigate risk to the U.S. government.

Moreover, with the implementation of the Federal Financing Bank as the preferred lender for Title XI obligation guarantees, there is no longer a need for the strict uniformity in the regulatory structure of the guaranteed obligations. Previously, Title XI guaranteed debt was marketed to the public through

¹ U.S. Department of Transportation, Maritime Administration, *Federal Credit and Maritime Lending Industry Best Practices*, June 2020. Available at <https://www.maritime.dot.gov/grants/title-xi/statute-regulations-and-guidance>.

investment banks. This created a need for uniformity to encourage the purchase of the debt by entities not familiar with maritime financings and to allow for easier resale by a debt purchaser to a third-party at a future date. The expectation of uniformity by the market limited the payment schedule options available for Title XI Program participants in circumstances where it may have been in the U.S. government's best interest to structure the debt differently to mitigate risk.

Due to the length of time since the regulations were last updated, the availability of modern financial requirements of similar federal programs, the evolving maritime environment, changes to federal credit and maritime lending best practices, and updates to the Title XI statute, MARAD proposes to amend its regulations. These proposed amendments would include permitting MARAD to use financial requirements, consistent with federal credit and maritime lending best practices for entities having a similar credit rating that MARAD determines are necessary and appropriate to protect the interest of the United States. The proposed amendments would also allow MARAD to use alternative methods of amortization, other than level principal or level debt payment, when an independent financial advisor approved by MARAD conducts independent analysis and review and demonstrates that such other method is in the best interests of the United States.

The proposed rule is intended to update the lending parameters in the current regulations, which no longer best achieve the intended purpose of minimizing the risk of Title XI Program defaults and to better align the lending practices to reflect federal credit and maritime lending best practices. Additionally, MARAD expects that the proposed regulations would reduce the economic burden on applicants in complying with Title XI Program requirements that are inconsistent with other lending instruments. MARAD also expects that the updated lending parameters should encourage the construction of vessels in United States shipyards which otherwise would not meet the current constrained Title XI Program financial requirements.

Public Participation

How do I submit comments on the proposed rule?

Include the docket number in your comments to ensure that your comments are correctly filed in the Docket. We encourage you to provide concise

comments; however, you may attach additional documents as necessary. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above-entitled heading **ADDRESSES**.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date.

For access to the docket to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at www.regulations.gov, keyword search "MARAD-2023-0086."

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

Will my comments be made available to the public?

Before including your address, phone number, email address or other personal information in your comment, be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. When you submit comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

I. Regulatory Analyses and Notices

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Executive Order 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), supplemented by EO13563 (76 FR 3821, January 18, 2011) and USDOT policies and procedures, a determination must be made whether a regulatory action is "significant," and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines "significant regulatory action" as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

This notice of proposed rulemaking has been determined to be a significant regulatory action under section 3(f) of E.O. 12866. The rule was therefore reviewed by the Office of Information and Regulatory Affairs (OIRA) within OMB prior to publication.

Analysis of Benefits and Costs

The Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower. Both the statute and MARAD's implementing regulations also contain several criteria and requirements intended to reduce the risk of a loan default. Though the Title XI Program regulations have been amended over the years, the current financial requirements and limitations remain substantially the same as when

they were introduced in 1978. As lending practices have evolved, the regulatory standards have not changed to reflect current lending practices for vessel financing.

Benefits

The major benefits of amending Part 298 will be to: (1) modernize MARAD's financial review process by removing static financial covenants and loan thresholds and replacing them with best practices intended to improve the quality of MARAD financial reviews; and (2) allow MARAD to examine more indicators of financial health, thus improving MARAD's ability to accurately assess applicants and to better mitigate financial risk to the Government.

Costs

MARAD does not believe that the rulemaking is likely to impose quantifiable or nonquantifiable costs. The primary function of this regulatory change is to modernize MARAD financial review methods and processes, thereby improving MARAD's ability to evaluate applicants.

Analysis of Alternatives

On December 20, 2019, the NDAA 2020 directed MARAD "to utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries." In considering potential alternatives, MARAD reviewed a number of federal credit programs that make loans and obligation guarantees similar to the Title XI Program. MARAD considered a review of federal credit practices that identified the Title XI Program as the only Federal program with regulatorily-imposed financial covenants and thresholds.² The report found that the static regulatory requirements significantly hindered the Title XI Program's ability to tailor the terms of credit assistance to address the characteristics of a specific project. MARAD considered the report's findings in light of its current practices and proposed in this NPRM amendment to conform to the report's findings.

Executive Order 13132 (Federalism)

MARAD has examined the rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the

rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MARAD has determined that this rulemaking, in which MARAD proposes to amend its regulations implementing the Title XI Program financial requirements to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors, will not significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in E.O. 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The requirements of E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking, because it would not directly affect the interests of State and local governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. Potential applicants to the Title XI program are vessel owners and operators, as well as shipyard owners. These industries fit under NAICS codes 336611, Ship Building and Repairing and NAICS codes 483111–483212, which cover different types of transportation by vessel and would include vessel owners and operators.³ The SBA defines a small

business under NAICS code 36611 as a business with 1,250 employees or less and under NAICS code. The SBA defines small businesses under NAICS codes 483111–483212 as businesses with 500–1,500 employees or less, depending on the specific NAICS code.

The Title XI Program guarantees full payment of the obligation's unpaid principal and interest in the event of a default by the borrower. The program maintains a \$5000 application fee, a fee that has not increased in 30 years and would remain unchanged by this proposal. MARAD also estimates that the application process currently takes approximately 150 hours, a figure that would also remain unchanged by this proposal. The program provides substantial financial assistance to maritime industry participants, and the proposed changes are intended to eliminate challenges caused by the regulatory requirements, a reason cited by stakeholders as to why they will not use the program. The proposed rule is also intended to make Title XI debt financial covenants compatible with other lender covenants, which stakeholders cited as an obstacle in the prompt processing and approval of loan guarantee applications. MARAD intends for the proposed changes, if finalized, to attract a higher volume of high-quality applicants to the program. Based on the foregoing, MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

E.O. 12988 requires that agencies promulgating new regulations or reviewing existing regulations take steps to minimize litigation, eliminate ambiguity and to reduce burdens on the regulated public. MARAD has reviewed this rulemaking and has determined that this rulemaking action conforms to the applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform,

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This action will not result in additional expenditures by State, local, or tribal governments or by any members of the private sector. Therefore, MARAD has

² U.S. Department of Transportation, Maritime Administration, *Federal Credit and Maritime Lending Industry Best Practices*, June 2020. Available at <https://www.maritime.dot.gov/grants/title-xi/statute-regulations-and-guidance>.

³ These NAICS codes are 483111/483112 Deep Sea Freight/Passenger Transportation, 483113/483114 Coastal and Great Lakes Freight/Passenger Transportation, and 483211/483212 Inland Water Freight/Passenger Transportation. Navigational Services to Shipping, under NAICS code 488330 may also be applicable. SBA defines a small business under this NAICS code as having an average annual revenue of \$41.5 million or less.

not prepared an assessment pursuant to the Unfunded Mandates Reform Act.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. This rulemaking amends an existing regulation without any change to the contemplated submission of information which might otherwise result in a change to the applicant's burden hours. Therefore, the rulemaking can rely on the existing information collected under OMB control number 2133-0018. Information submitted by applicants to the program will continue to be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Clarity of Regulations

E.O. 12866 requires each Agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the proposed rule clearly stated?
 - (2) Does the proposed rule contain technical language or terminology that interferes with its clarity?
 - (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphs, etc.) aid or reduce its clarity?
 - (4) Would the rule be easier to understand if it were divided into more but shorter sections (a "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, "\$ 393.21 Who can apply?")
 - (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** part of this preamble helpful in understanding the proposed rule?
 - (6) What else could we do to make the proposed rule easier to understand?
- Send a copy of any comments that concern how we could make this proposed rule easier to understand to:

Division of Legislation and Regulations, Department of Transportation, Maritime Administration, Office of the Chief Counsel, Room W24-220, 1200 New Jersey Ave. SE, Washington, DC 20590. You may also email the comments to this address: Rulemakings.MARAD@dot.gov. Please include the RIN number or docket number for this rule in your submission.

List of Subjects in 46 CFR Part 298

Obligation guarantees.

For the reasons described in the preamble, the Maritime Administration proposes to amend 46 CFR part 298 to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart B—Eligibility

- 1. Amend § 298.13 by revising paragraphs (d) introductory text, (d)(2)(ii), (d)(3) introductory text, (e) introductory text, (e)(3)(i), and (f) through (i) to read as follows:

§ 298.13 Financial requirements.

* * * * *

(d) *Financial definitions.* For the purpose of this section and §§ 298.35, 298.36, and 298.42 of this part:

(2) * * *

(ii) In determining current liabilities, you must deduct any excess of untermiated voyage expenses over untermiated voyage revenue.

(3) "Equity" or "Net Worth" means, as of any date, (the total of paid-in-capital stock, paid-in surplus, earned surplus, retained earnings, and appropriated surplus,) and all other amounts that would be included in net worth in accordance with GAAP, but does not include:

* * * * *

(e) *Applicability.* The financial resources must be adequate to meet the financial terms MARAD requires pursuant to paragraph (f) of this section.

(3) * * *

(i) A pro forma balance sheet at the time of the application; and

* * * * *

(f) *Financial requirements at Closing.* As a condition of disbursement of a guaranteed loan, the Company must demonstrate financial performance that supports a reasonable prospect of repayment taking into account foreseeable negative economic conditions.

(1) The financial requirements of this section are applicable to Companies qualifying under one of the following three categories:

(i) Owner as vessel operator, where the owner is to be the vessel operator;

(ii) Lessee or charterer as operator, where the lessee or charterer is to be the vessel operator; or

(iii) Owner as general shipyard facility, where the owner of a shipyard project is a general shipyard facility.

(2) Qualifying financial performance will be substantiated by financial results over at least the trailing 12 quarters and/or demonstrated by pro-forma financial performance that is underpinned by reasonable assumptions.

(3) Qualifying creditworthiness will be substantiated by reviewing and evaluating applicants based on revenue metrics which include the following non-exhaustive list:

- (i) Market factors;
- (ii) Strategic positioning;
- (iii) Management and governance;
- (iv) Pro-forma financial strength;
- (v) Project specific factors; and
- (vi) Loan terms.

(g) *Adjustments to financial requirements at Closing.* If the owner, although not operating a vessel, assumes any of the operating responsibilities, MARAD may adjust the financial requirements of the owner and operator by increasing the requirements of the owner and decreasing those of the operator.

(h) *Subordinated debt considered to be equity.* With MARAD approval, part of the equity requirements applicable under paragraph (c) of this section may be satisfied by debt, fully subordinated by a subordination agreement with MARAD, as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Title XI Reserve Fund and Financial Agreement (described in section 298.35). Such subordinated debt must not be secured by any interest in property that is security for Guarantees under Title XI, unless the obligor and the lender enter into a written agreement approved by MARAD. The written agreement must provide, among other things, that if any Title XI financing or advance by us to the obligor occurs in the future, such security interest of the lender must become subordinated to any indebtedness to MARAD incurred by the obligor and to any security interest obtained by MARAD in that property or other property, with respect to the subsequent indebtedness.

(i) *Modified requirements.* MARAD may waive or modify the financial terms or requirements otherwise applicable under sections 298.35 and 298.42, upon

determining that there is adequate security for the guarantees or that such waiver or modification is in the best interests of the United States. MARAD may impose similar financial requirements on any person providing other security for the guarantees.

Subpart C—Guarantees

§ 298.21 [Amended]

- 2. Amend § 298.21, in paragraph (b)(1), by removing the word “Equity” and adding in its place the word “equity”.
- 3. Amend § 298.22 by revising paragraph (b) to read as follows:

§ 298.22 Amortization of Obligations.

* * * * *

(b) Usually, the payment of principal (amortization) must be made semi-annually, but in no event less frequently than on an annual basis, and in either case the amortization must be in equal payments of principal (level principal), unless MARAD approves the periodic payment of a constant aggregate amount, comprised of both interest and principal components that are variable in amount (level payment). No other proposed

method of amortization will be allowed that would reduce the amount of periodic amortization below that determined under the level principal or level payment basis at any time prior to maturity of the obligations, except where a third-party expert approved or engaged by MARAD conducts an independent analysis and review of a project and structure of an obligation and demonstrates that such other method is in the best interests of the United States.

Subpart D—Documentation

- 4. Amend § 298.35 by revising the introductory text of paragraphs (b)(2) and (d) to read as follows:

§ 298.35 Title XI Reserve Fund and Financial Agreement.

* * * * *

(b) * * *

(2) *Supplemental covenants which may become applicable.* Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, the Company must remain in compliance with financial terms and requirements specified by

MARAD based on the agency’s evaluation for financial performance and creditworthiness and appropriate to protect the interest of the United States. The Company must not, without prior MARAD written consent:

* * * * *

(d) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial terms required by paragraph (b)(2) of this section, the Company must make one or more deposits to MARAD to be held by the Depository (the Title XI Reserve Fund), as further provided for in the depository agreement. The amount of deposit for any year, or period less than a full year, where applicable, will be determined as follows:

* * * * *

(Authority: National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116–92, 46 U.S.C. chapter 537, 49 CFR 1.93(a))

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–08243 Filed 4–24–23; 8:45 am]

BILLING CODE 4910–81–P