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B-134628, JAN. 15, 1958

TO HONORABLE JAMES R. DURFEE, CHAIRMAN, CIVIL AERONAUTICS BOARD:

YOUR LETTER OF DECEMBER 9, 1957, REFERS TO PUBLIC LAW 85-307, APPROVED SEPTEMBER 7, 1957, 71 STAT. 629, WHICH AUTHORIZES THE BOARD TO GUARANTEE LENDERS AGAINST LOSS OF PRINCIPAL OR INTEREST ON ANY AIRCRAFT PURCHASE LOANS MADE BY SUCH LENDERS TO CERTAIN AIR CARRIERS HOLDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY ISSUED BY THE BOARD. YOU REQUEST OUR VIEWS WITH RESPECT TO YOUR PROPOSAL TO ADOPT A PROCEDURE WHEREBY IN CASE OF DEFAULT BY A CARRIER PAYMENT WILL BE MADE TO THE LENDER UPON DEFAULT AND NOT UPON COMPLETION OF FORECLOSURE PROCEEDINGS. IN SUPPORT OF THIS PROPOSAL YOU STATE THAT:

"AS THE BOARD CONSTRUES ITS POWERS UNDER THIS STATUTE, IT MAY ENTER INTO A LOAN GUARANTY AGREEMENT WITH LENDERS TO THE EFFECT THAT THE BOARD WILL PAY TO THE LENDER 90 PERCENT OF THE UNPAID PRINCIPAL OF ANY LOAN GUARANTEED BY IT UPON DEFAULT OF THE DEBTOR (CARRIER) AND THAT THEREUPON THE BOARD WOULD BE SUBROGATED TO THE RIGHTS OF THE LENDER AGAINST THE CARRIER. THE BOARD DOES NOT BELIEVE THAT ITS POWER UNDER THE STATUTE IS LIMITED SOLELY TO INDEMNIFY AGAINST ULTIMATE LOSS AFTER COMPLETION OF FORECLOSURE PROCEEDINGS. SUCH A CONSTRUCTION OF THE ACT IN OUR JUDGMENT WOULD NOT ONLY BE CONTRARY TO THE DECLARATION OF POLICY EXPRESSED IN THIS ACT, BUT WOULD BE INCONSISTENT WITH THE POLICY DIRECTIVES OF THE CIVIL AERONAUTICS ACT WHICH DIRECTS THE BOARD TO ENCOURAGE AND DEVELOP AN ADEQUATE NATIONAL AIR TRANSPORTATION SYSTEM. ANY SUCH PROCEDURE WHICH, UPON A CARRIER'S DEFAULT, WOULD RESULT, WITHOUT ANY CONSIDERATION BEING GIVEN TO THE OVER-ALL PUBLIC INTEREST, IN TERMINATING THE CARRIER'S OPERATIONS THUS LEAVING MANY COMMUNITIES WITHOUT AIR TRANSPORTATION SERVICE, WOULD NOT IN OUR OPINION MEET THE OBJECTIVES OF THE GUARANTY LOAN LEGISLATION, NOR WOULD IT BE CONSISTENT WITH THE OBJECTIVES SOUGHT BY THE BOARD IN DRAFTING THIS LEGISLATION. ON THE OTHER HAND, WE BELIEVE THE EXPRESS PURPOSE OF THIS STATUTE CAN BE FULLY ACCOMPLISHED, WITH GREATER PROTECTION TO THE GOVERNMENT, BY ADOPTING A PROCEDURE WHICH GUARANTEES PAYMENT AT THE TIME OF DEFAULT.'

ALSO, YOU REFER TO OUR DECISIONS REPORTED IN 15 COMP. GEN. 256, 16 COMP. GEN. 336; ID. 723 AND 36 COMP. GEN. 697, DEALING WITH THE PAYMENT BY THE UNITED STATES UPON DEFAULT, OF LOANS MADE BY FINANCIAL INSTITUTIONS INSURED BY THE UNITED STATES AGAINST LOSS UNDER THE PROVISIONS OF SECTION 2 OF THE NATIONAL HOUSING ACT OF JUNE 27, 1934, 48 STAT. 1248. IN THE DECISION IN 16 COMP. GEN. 336, WE HELD, WITH REGARD TO THIS STATUTE, THAT THE UNITED STATES IS SUBSTANTIALLY IN THE POSITION OF A GUARANTOR OF SUCH LOANS SO THAT THE INSTITUTIONS ARE NOT REQUIRED TO MAKE ANY SPECIAL EFFORTS TOWARD COLLECTION, BUT MAY FALL BACK ON THE GOVERNMENT AND LEAVE TO THE GOVERNMENT THE WHOLE RESPONSIBILITY FOR COLLECTION. SINCE THE GOVERNMENT CLEARLY IS A GUARANTOR OF

THE LOANS UNDER THE ACT OF SEPTEMBER 7, 1957, HERE INVOLVED, A SIMILAR CONCLUSION IS JUSTIFIED IN THE INSTANT MATTER.

IN VIEW THEREOF, AND IN THE LIGHT OF THE BROAD AUTHORITY VESTED IN THE BOARD BY SECTION 3 OF THE ACT TO MAKE "SUCH GUARANTY * * * IN SUCH FORM, ON SUCH TERMS AND CONDITIONS, AND PURSUANT TO SUCH REGULATIONS, AS THE BOARD DEEMS NECESSARY," WE PERCEIVE NO OBJECTION TO THE PROCEDURE PROPOSED TO BE ADOPTED BY THE BOARD.