

(4) the cost of insurance for an eligible debt financing instrument; and

(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) **CONDITIONS ON PAYMENT.**—The Secretary may reimburse a State or public authority under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) **FEDERAL SHARE.**—The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) **STATUTORY CONSTRUCTION.**—Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not—

(1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or

(2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 95-599, title I, §115(b), Nov. 6, 1978, 92 Stat. 2698; Pub. L. 97-424, title I, §107(f), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100-17, title I, §133(b)(7), Apr. 2, 1987, 101 Stat. 171; Pub. L. 104-59, title III, §311(a), Nov. 28, 1995, 109 Stat. 583.)

#### AMENDMENTS

1995—Pub. L. 104-59 amended section generally, substituting present provisions for provisions which authorized States to use portion of Federal highway payments to retire principal of bonds proceeds of which were used for certain Federal highway projects.

1987—Pub. L. 100-17 inserted “or for substitute highway projects approved under section 103(e)(4) of this title” before “and the retirement” in first sentence.

1983—Pub. L. 97-424 inserted “or for substitute highway projects approved under section 103(e)(4) of this title,” after “highway systems in urban areas,” and “or on highway projects approved under section 103(e)(4) of this title” after “expenditure on such system”.

1978—Pub. L. 95-599 inserted provisions relating to the retirement of bonds the proceeds of which were used for program projects, provisions that section was not to be construed as a commitment on the part of the United States to pay the principal of any such bonds, and provisions prohibiting inclusion of interest and incidental costs of bonds in estimated cost of completion.

#### PAYMENT OF INTEREST ON BONDS ISSUED PRIOR TO AND AFTER NOVEMBER 6, 1978

Section 115(c) of Pub. L. 95-599 provided that: “No interest shall be paid under authority of section 122 of title 23, United States Code, on any bonds issued prior to the date of enactment of this Act [Nov. 6, 1978], unless such bonds were issued for projects which were under construction on January 1, 1978. Interest on bonds issued in any fiscal year by a State after the date of enactment of this Act may be paid under authority of section 122 of title 23, United States Code, only if (1) such State was eligible to obligate funds of another State under subsection (a) of this section during such fiscal year and (2) the Secretary of Transportation certifies that such eligible State utilized, or will utilize, to the fullest extent possible during such fiscal year its authority to obligate funds under such subsection (a) of

this section [amending section 118(b) of this title]. No interest shall be paid under section 122 of title 23, United States Code, on that part of the proceeds of bonds issued after the date of enactment of this Act used to retire or otherwise refinance bonds issued prior to such date.”

#### § 123. Relocation of utility facilities

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on any Federal-aid system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term “utility”, for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term “cost of relocation”, for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 100-17, title I, §133(b)(8), Apr. 2, 1987, 101 Stat. 171.)

#### AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17 substituted “any Federal-aid system,” for “the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas,”.

#### STUDY OF PROCUREMENT PRACTICES AND PROJECT DELIVERY

Pub. L. 105-178, title I, §1213(e), June 9, 1998, 112 Stat. 201, provided that:

“(1) **STUDY.**—The Comptroller General shall conduct a study to assess the impact that a utility company’s failure to relocate its facilities in a timely manner has on the delivery and cost of Federal-aid highway and bridge projects. The study shall also assess the following:

“(A) Methods States use to mitigate such delays, including the use of the courts to compel cooperation.

“(B) The prevalence and use of incentives to utility companies for early completion of utility relocations on Federal-aid transportation project sites and, conversely, penalties assessed on utility companies for utility relocation delays on such projects.

“(C) The extent to which States have used available technologies, such as subsurface utility engineering, early in the design of Federal-aid highway and bridge projects so as to eliminate or reduce the need for or delays due to utility relocations.

“(D) Whether individual States compensate transportation contractors for business costs incurred by the contractors when Federal-aid highway and bridge projects under contract to them are delayed by utility-company-caused delays in utility relocations and

any methods used by States in making any such compensation.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Comptroller General shall transmit to Congress a report on the results of the study with any recommendations the Comptroller General determines appropriate as a result of the study.”

#### § 124. Advances to States

If the Secretary shall determine that it is necessary for the expeditious completion of projects on any of the Federal-aid systems, including the Interstate System, he may advance to any State out of any existing appropriations the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special revolving trust fund, by the State official authorized under the laws of the State to receive Federal-aid highway funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired, and for construction which has been actually performed and approved by the Secretary pursuant to this chapter. Upon determination by the Secretary that any part of the funds advanced to any State under the provisions of this section are no longer required, the amount of the advance, which is determined to be in excess of current requirements of the State, shall be repaid upon his demand, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced. Any sum advanced and not repaid on demand shall be deducted from sums due the State for the Federal pro rata share of the cost of construction of Federal-aid projects.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 95-599, title I, § 118, Nov. 6, 1978, 92 Stat. 2699; Pub. L. 105-178, title I, §§ 1212(a)(2)(A)(i), 1226(c), June 9, 1998, 112 Stat. 193; Pub. L. 105-206, title IX, § 9003(a), July 22, 1998, 112 Stat. 837.)

#### AMENDMENTS

1998—Pub. L. 105-178, § 1226(c), as added by Pub. L. 105-206, § 9003(a), struck out subsec. (a) designation before “If the Secretary” and struck out subsec. (b), which had: authorized advance of 100 per centum of cost of construction where Secretary determined that toll bridge, toll tunnel, or approach thereto meeting section 129 requirements was necessary to complete essential gap in Interstate System; provided repayment schedule; and directed that advance be made from funds apportioned to State for Interstate System and that section 103(e)(4) provisions would not apply.

Pub. L. 105-178, § 1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department” in two places.

1978—Pub. L. 95-599 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of this title.

#### ACCELERATION OF PROJECTS

Pub. L. 94-280, title I, § 141, May 5, 1976, 90 Stat. 444, as amended by Pub. L. 95-599, title I, § 136, Nov. 6, 1978, 92 Stat. 2709, provided that: “Not later than six months after the completion of such project, the Secretary of Transportation shall submit a report to Congress which includes, but is not limited to, a description of the methods used to reduce the time necessary for the completion of such project, recommendations for applying such methods to other highway projects, and any changes which may be necessary to existing law to permit further reductions in the time necessary to complete highway projects.”

#### § 125. Emergency relief

(a) GENERAL ELIGIBILITY.—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

(1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

(2) catastrophic failure from any external cause.

(b) RESTRICTION ON ELIGIBILITY.—In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) FUNDING.—Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:

(1) Not more than \$100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.

(2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.

(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: *Provided*, That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic fail-