

of the ability of the non-Federal borrower to repay the project financing from user fees or other dedicated revenue sources;

(D) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to pay all operations, maintenance, and replacement costs of the project facilities; and

(E) such other criteria as the Secretary determines to be appropriate.

(b) Waiver

The Secretary may waive any of the criteria in subsection (a)(2) that the Secretary determines to be duplicative or rendered unnecessary because of an action already taken by the United States.

(c) Projects previously authorized

A project that was authorized for construction under Federal reclamation laws prior to December 22, 2006, shall be eligible for assistance under this subchapter, subject to the criteria established by the Secretary under subsection (a).

(d) Criteria for rural water supply projects

A rural water supply project that is determined to be feasible under section 2405 of this title is eligible for a loan guarantee under section 2423 of this title.

(Pub. L. 109–451, title II, §203, Dec. 22, 2006, 120 Stat. 3357.)

§ 2423. Loan guarantees

(a) Authority

Subject to the availability of appropriations, the Secretary may make available to lenders for a project meeting the eligibility criteria established in section 2422 of this title loan guarantees to supplement private-sector or lender financing for the project.

(b) Terms and limitations

(1) In general

Loan guarantees under this section for a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines to be appropriate to protect the financial interests of the United States.

(2) Amount

Loan guarantees by the Secretary shall not exceed an amount equal to 90 percent of the cost of the project that is the subject of the loan guarantee, as estimated at the time at which the loan guarantee is issued.

(3) Interest rate

An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(4) Amortization

A loan guarantee under this section shall provide for complete amortization of the loan guarantee within not more than 40 years.

(5) Nonsubordination

An obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(c) Prepayment and refinancing

Any prepayment or refinancing terms on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

(Pub. L. 109–451, title II, §204, Dec. 22, 2006, 120 Stat. 3358.)

§ 2424. Defaults

(a) Payments by Secretary

(1) In general

If a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(2) Payment required

By such date as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on, and unpaid principal of, the obligation with respect to which the borrower has defaulted, unless the Secretary finds that there was not default by the borrower in the payment of interest or principal or that the default has been remedied.

(3) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the non-Federal borrower that may be agreed on by the parties to the obligation and approved by the Secretary.

(b) Subrogation

(1) In general

If the Secretary makes a payment under subsection (a), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the loan guarantee or related agreements, including, as appropriate, the authority (notwithstanding any other provision of law) to—

(A) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to the loan guarantee or related agreements; or

(B) permit the non-Federal borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines the purposes to be in the public interest.

(2) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) Payment of principal and interest by Secretary

With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the non-Federal borrower, from funds appropriated for that purpose, the principal and interest payments that become due and payable on the unpaid balance of the obligation if the Secretary finds that—

(1)(A) the non-Federal borrower is unable to meet the payments and is not in default;