

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;

(B) it is in the public interest to permit the non-Federal borrower to continue to pursue the purposes of the project; and

(C) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(2) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the non-Federal borrower is obligated to pay under the agreement being guaranteed; and

(3) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

**(d) Action by Attorney General**

**(1) Notification**

If the non-Federal borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

**(2) Recovery**

On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

(A) such assets of the defaulting non-Federal borrower as are associated with the obligation; or

(B) any other security pledged to secure the obligation.

(Pub. L. 109-451, title II, §205, Dec. 22, 2006, 120 Stat. 3358.)

**§ 2425. Operations, maintenance, and replacement costs**

**(a) In general**

The non-Federal share of operations, maintenance, and replacement costs for a project receiving Federal assistance under this subchapter shall be 100 percent.

**(b) Plan**

On request of the non-Federal borrower, the Secretary may assist in the development of an operation, maintenance, and replacement plan to provide the necessary framework to assist the non-Federal borrower in establishing rates and fees for project beneficiaries.

(Pub. L. 109-451, title II, §206, Dec. 22, 2006, 120 Stat. 3360.)

**§ 2426. Title to newly constructed facilities**

**(a) New projects and facilities**

All new projects or facilities constructed in accordance with this subchapter shall remain under the jurisdiction and control of the non-Federal borrower subject to the terms of the repayment agreement.

**(b) Existing projects and facilities**

Nothing in this subchapter affects the title of—

(1) reclamation projects authorized prior to December 22, 2006;

(2) works supplemental to existing reclamation projects; or

(3) works constructed to rehabilitate existing reclamation projects.

(Pub. L. 109-451, title II, §207, Dec. 22, 2006, 120 Stat. 3360.)

**§ 2427. Water rights**

**(a) In general**

Nothing in this subchapter preempts or affects State water law or an interstate compact governing water.

**(b) Compliance required**

The Secretary shall comply with State water laws in carrying out this subchapter. Nothing in this subchapter affects or preempts State water law or an interstate compact governing water.

(Pub. L. 109-451, title II, §208, Dec. 22, 2006, 120 Stat. 3360.)

**§ 2428. Interagency coordination and cooperation**

**(a) Consultation**

The Secretary shall consult with the Secretary of Agriculture before promulgating criteria with respect to financial appraisal functions and loan guarantee administration for activities carried out under this subchapter.

**(b) Memorandum of agreement**

The Secretary and the Secretary of Agriculture shall enter into a memorandum of agreement providing for Department of Agriculture financial appraisal functions and loan guarantee administration for activities carried out under this subchapter.

(Pub. L. 109-451, title II, §209, Dec. 22, 2006, 120 Stat. 3360.)

**§ 2429. Records; audits**

**(a) In general**

A recipient of a loan guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

**(b) Access**

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

(Pub. L. 109-451, title II, §210, Dec. 22, 2006, 120 Stat. 3360.)

**§ 2430. Full faith and credit**

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(Pub. L. 109-451, title II, §211, Dec. 22, 2006, 120 Stat. 3360.)

**§ 2431. Report**

Not later than 1 year after the date on which the eligibility criteria are published in the Federal Register under section 2422(a) of this title, and every 2 years thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a re-