

(2) Lender

The term “lender” means—

(A) a non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulation¹ (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)); or

(B) a clean renewable energy bond lender (as defined in section 54(j)(2) of title 26 (as in effect on December 22, 2006)).

(3) Loan guarantee

The term “loan guarantee” has the meaning given the term “loan guarantee” in section 661a of title 2.

(4) Non-Federal borrower

The term “non-Federal borrower” means—

(A) a State (including a department, agency, or political subdivision of a State); or

(B) a conservancy district, irrigation district, canal company, water users’ association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

(5) Obligation

The term “obligation” means a loan or other debt obligation that is guaranteed under this section.

(6) Project

The term “project” means—

(A) a rural water supply project (as defined in section 2401(9) of this title);

(B) an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility—

(i) that is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

(C) an improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary—

(i) improves water management; and

(ii) fulfills other Federal goals.

(7) Secretary

The term “Secretary” means the Secretary of the Interior.

(Pub. L. 109–451, title II, §202, Dec. 22, 2006, 120 Stat. 3356.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (2)(A), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

SHORT TITLE

This subchapter known as the “Twenty-First Century Water Works Act”, see Short Title note set out under section 2401 of this title.

¹ So in original. Probably should be “Regulations”.

§ 2422. Project eligibility**(a) Eligibility criteria****(1) In general**

The Secretary shall develop and publish in the Federal Register criteria for determining the eligibility of a project for financial assistance under section 2423 of this title.

(2) Inclusions

Eligibility criteria shall include—

(A) submission of an application by the lender to the Secretary;

(B) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

(C) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, 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.)