

a direct loan when specified conditions are fulfilled by the borrower.

(5) The term “intermodal” means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(6) The term “loan guarantee” means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(7) The term “loan guarantee commitment” means a binding agreement by the Secretary to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(8) The term “modification” means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

(Pub. L. 94-210, title V, § 501, as added Pub. L. 105-178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.)

#### PRIOR PROVISIONS

A prior section 821, Pub. L. 94-210, title V, § 501, Feb. 5, 1976, 90 Stat. 66; Pub. L. 95-620, title VIII, § 803(c)(1), Nov. 9, 1978, 92 Stat. 3347; Pub. L. 96-101, § 24(b), Nov. 4, 1979, 93 Stat. 747; Pub. L. 96-448, title IV, § 405(d), Oct. 14, 1980, 94 Stat. 1947; Pub. L. 97-35, title XI, § 1162(b), Aug. 13, 1981, 95 Stat. 684; Pub. L. 99-509, title IV, § 4033(c)(2), Oct. 21, 1986, 100 Stat. 1908, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 105-178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.

#### SAVINGS PROVISION

Pub. L. 105-178, title VII, § 7203(b)(2), June 9, 1998, 112 Stat. 477, provided that: “A transaction entered into under the authority of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) before the date of enactment of this Act [June 9, 1998] shall be administered until completion under its terms as if this Act [see Tables for classification] were not enacted.”

### § 822. Direct loans and loan guarantees

#### (a) General authority

The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;
- (2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);
- (3) government sponsored authorities and corporations;

(4) railroads;

(5) joint ventures that include at least one railroad; and

(6) solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.

#### (b) Eligible purposes

##### (1) In general

Direct loans and loan guarantees under this section shall be used to—

(A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or

(C) develop or establish new intermodal or railroad facilities.

##### (2) Operating expenses not eligible

Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

#### (c) Priority projects

In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

(1) enhance public safety;

(2) enhance the environment;

(3) promote economic development;

(4) enable United States companies to be more competitive in international markets;

(5) are endorsed by the plans prepared under section 135 of title 23 by the State or States in which they are located;

(6) preserve or enhance rail or intermodal service to small communities or rural areas;

(7) enhance service and capacity in the national rail system; or

(8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

#### (d) Extent of authority

The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$35,000,000,000 at any one time. Of this amount, not less than \$7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

#### (e) Rates of interest

##### (1) Direct loans

The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

##### (2) Loan guarantees

The Secretary shall not make a loan guarantee under this section if the interest rate for

the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

**(f) Infrastructure partners**

**(1) Authority of Secretary**

In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

**(2) Credit risk premium amount**

The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of—

(A) the circumstances of the applicant, including the amount of collateral offered, if any;

(B) the proposed schedule of loan disbursements;

(C) historical data on the repayment history of similar borrowers;

(D) consultation with the Congressional Budget Office;

(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and

(F) any other factors the Secretary considers relevant.

**(3) Payment of premiums**

Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts.

**(4) Cohorts of loans**

In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis. A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.

**(g) Prerequisites for assistance**

The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

(1) repayment of the obligation is required to be made within a term of not more than 35 years from the date of its execution;

(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;

(4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b) of this section.

**(h) Conditions of assistance**

(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

(A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

(B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

(C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b) of this section.

(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

(A) the standards of section 24312 of title 49, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 836 of this title, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.

**(i) Time limit for approval or disapproval**

Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.

**(j) Repayment schedules****(1) In general**

The Secretary shall establish a repayment schedule requiring payments to commence not later than the sixth anniversary date of the original loan disbursement.

**(2) Accrual**

Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.

(Pub. L. 94-210, title V, § 502, as added Pub. L. 105-178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 473; amended Pub. L. 109-59, title IX, § 9003(b)-(g), Aug. 10, 2005, 119 Stat. 1921-1923; Pub. L. 110-432, div. A, title VII, § 701(e), Oct. 16, 2008, 122 Stat. 4906.)

## REFERENCES IN TEXT

Section 410(a) of the Amtrak Reform and Accountability Act of 1997, referred to in subsec. (a)(2), is section 410(a) of Pub. L. 105-134, which is set out as a note under section 24101 of Title 49, Transportation.

## PRIOR PROVISIONS

A prior section 822, Pub. L. 94-210, title V, § 502, Feb. 5, 1976, 90 Stat. 67; Pub. L. 95-620, title VIII, § 803(c)(2)-(4), Nov. 9, 1978, 92 Stat. 3347, related to the Rail Fund, prior to repeal by Pub. L. 105-178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.

## AMENDMENTS

2008—Subsec. (g)(1). Pub. L. 110-432 substituted “35 years” for “25 years”.

2005—Subsec. (a). Pub. L. 109-59, § 9003(b), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “The Secretary may provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least 1 railroad.”

Subsec. (c)(7), (8). Pub. L. 109-59, § 9003(c), added pars. (7) and (8).

Subsec. (d). Pub. L. 109-59, § 9003(d), substituted “\$35,000,000,000” for “\$3,500,000,000” and “\$7,000,000,000” for “\$1,000,000,000” and inserted at end “The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.”

Subsec. (f)(2)(A). Pub. L. 109-59, § 9003(f)(2), substituted “amount of collateral offered, if any;” for “amount of collateral offered;”.

Subsec. (f)(2)(E), (F). Pub. L. 109-59, § 9003(e)(1)-(3), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (f)(4). Pub. L. 109-59, § 9003(e)(4), inserted at end “A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.”

Subsec. (h). Pub. L. 109-59, § 9003(f)(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (1), respectively, and added pars. (2) and (3).

Subsecs. (i), (j). Pub. L. 109-59, § 9003(g), added subsecs. (i) and (j).

## SUBSTANTIVE CRITERIA AND STANDARDS

Pub. L. 109-59, title IX, § 9003(j), Aug. 10, 2005, 119 Stat. 1923, provided that: “Not later than 30 days after the

date of enactment of this Act [Aug. 10, 2005], the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation Web site the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). The Secretary of Transportation shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of such publication.”

**§ 823. Administration of direct loans and loan guarantees****(a) Applications**

The Secretary shall prescribe the form and contents required of applications for assistance under section 822 of this title, to enable the Secretary to determine the eligibility of the applicant’s proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section.

**(b)<sup>1</sup> Full faith and credit**

All guarantees entered into by the Secretary under section 822 of this title shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

**(b)<sup>1</sup> Assignment of loan guarantees**

The holder of a loan guarantee made under section 822 of this title may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

**(c) Modifications**

The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States; and

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation.

**(d) Compliance**

The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this subchapter, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

**(e) Commercial validity**

For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this subchapter, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a

<sup>1</sup> So in original. There are two subsections designated (b).