

“(2) CONSTRUCTION; FEDERAL-AID HIGHWAY.—The terms ‘construction’ and ‘Federal-aid highway’ have the meanings such terms have under section 101 of title 23, United States Code.

“(3) OTHER ASSISTANCE.—The term ‘other assistance’ includes any use of funds in an infrastructure bank—

“(A) to provide credit enhancements;

“(B) to serve as a capital reserve for bond or debt instrument financing;

“(C) to subsidize interest rates;

“(D) to ensure the issuance of letters of credit and credit instruments;

“(E) to finance purchase and lease agreements with respect to transit projects;

“(F) to provide bond or debt financing instrument security; and

“(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

“(4) STATE.—The term ‘State’ has the meaning such term has under section 101 of title 23, United States Code.”

§ 602. Determination of eligibility and project selection

(a) ELIGIBILITY.—

(1) IN GENERAL.—A project shall be eligible to receive credit assistance under this chapter if—

(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and

(B) the project meets the criteria described in this subsection.

(2) CREDITWORTHINESS.—

(A) IN GENERAL.—To be eligible for assistance under this chapter, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—

(i) a rate covenant, if applicable;

(ii) adequate coverage requirements to ensure repayment;

(iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and

(iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to clause (iii), if the total amount of the senior debt and the Federal credit instrument is less than \$75,000,000, 1 rating agency opinion for each of the senior debt and Federal credit instrument shall be sufficient.

(B) SENIOR DEBT.—Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating agencies, unless the credit instrument is for an amount less than \$75,000,000, in which case 1 rating agency opinion shall be sufficient.

(3) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—A project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

(4) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application that is acceptable to the Secretary.

(5) ELIGIBLE PROJECT COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i)(I) \$50,000,000; or

(II) in the case of a rural infrastructure project, \$25,000,000; and

(ii) 33½ percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$15,000,000.

(6) DEDICATED REVENUE SOURCES.—The applicable Federal credit instrument shall be repayable, in whole or in part, from—

(A) tolls;

(B) user fees;

(C) payments owing to the obligor under a public-private partnership; or

(D) other dedicated revenue sources that also secure or fund the project obligations.

(7) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraph (3).

(8) APPLICATIONS WHERE OBLIGOR WILL BE IDENTIFIED LATER.—A State, local government, agency or instrumentality of a State or local government, or public authority may submit to the Secretary an application under paragraph (4), under which a private party to a public-private partnership will be—

(A) the obligor; and

(B) identified later through completion of a procurement and selection of the private party.

(9) BENEFICIAL EFFECTS.—The Secretary shall determine that financial assistance for the project under this chapter will—

(A) foster, if appropriate, partnerships that attract public and private investment for the project;

(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

(C) reduce the contribution of Federal grant assistance for the project.

(10) PROJECT READINESS.—To be eligible for assistance under this chapter, the applicant shall demonstrate a reasonable expectation that the contracting process for construction

of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under this chapter.

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available to cover the subsidy costs associated with the Federal credit instrument.

(2) ADEQUATE FUNDING NOT AVAILABLE.—If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of—

(A) the following fiscal year; and

(B) the fiscal year during which additional funds are available to receive credit assistance.

(3) PRELIMINARY RATING OPINION LETTER.—The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency—

(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

(B) including a preliminary rating opinion on the Federal credit instrument.

(c) FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with those funds:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(2) NEPA.—No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) APPLICATION PROCESSING PROCEDURES.—

(1) NOTICE OF COMPLETE APPLICATION.—Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice to inform the applicant whether—

(A) the application is complete; or

(B) additional information or materials are needed to complete the application.

(2) APPROVAL OR DENIAL OF APPLICATION.—Not later than 60 days after the date of issuance of the written notice under paragraph (1),

the Secretary shall provide to the applicant a written notice informing the applicant whether the Secretary has approved or disapproved the application.

(e) DEVELOPMENT PHASE ACTIVITIES.—Any credit instrument secured under this chapter may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 243, §182; renumbered §602 and amended Pub. L. 109-59, title I, §§1601(b), (c), 1602(b)(2), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 611.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(1)(A), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1)(B), (2), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (c)(1)(C), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, and which is classified principally to chapter 61 (§4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

AMENDMENTS

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to determination of eligibility and project selection, consisting of subsecs. (a) to (c).

2005—Pub. L. 109-59, §1602(d), renumbered section 182 of this title as this section.

Subsec. (a). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(1). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Pub. L. 109-59, §1601(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “The project—

“(A) shall be included in the State transportation plan required under section 135; and

“(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.”

Subsec. (a)(2). Pub. L. 109-59, §1601(b)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.”

Subsec. (a)(3)(A). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(3)(A)(i). Pub. L. 109-59, §1601(b)(2), substituted “\$50,000,000” for “\$100,000,000”.

Subsec. (a)(3)(A)(ii). Pub. L. 109-59, §1601(b)(3), substituted “33⅓” for “50”.

Subsec. (a)(3)(B). Pub. L. 109-59, §1601(b)(4), substituted “\$15,000,000” for “\$30,000,000”.

Subsec. (a)(4). Pub. L. 109-59, §1601(b)(5), substituted “The Federal credit instrument” for “Project financing” and inserted “that also secure the project obligations” before period at end.

Subsec. (b)(1). Pub. L. 109-59, §1601(c)(1), substituted “eligibility requirements” for “eligibility criteria”.

Subsec. (b)(2)(A)(iii), (iv), (vi). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (b)(2)(A)(viii). Pub. L. 109-59, §1602(b)(2), inserted “and chapter 1” after “this chapter”.

Subsec. (b)(2)(B). Pub. L. 109-59, §1601(c)(2), inserted “, which may be the Federal credit instrument,” after “obligations”.

Subsec. (c). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 603. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 602;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;

(C) to refinance existing Federal credit instruments for rural infrastructure projects; or

(D) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 602; or

(ii) otherwise meets the requirements of section 602.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) MAXIMUM AMOUNT.—The amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the se-

cured loan does not receive an investment grade rating, the amount of the senior project obligations.

(3) PAYMENT.—A secured loan under this section—

(A) shall—

(i) be payable, in whole or in part, from—

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

(IV) other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(4) INTEREST RATE.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(B) RURAL INFRASTRUCTURE PROJECTS.—

(i) IN GENERAL.—The interest rate of a loan offered to a rural infrastructure project under this chapter shall be at ½ of the Treasury Rate in effect on the date of execution of the loan agreement.

(ii) APPLICATION.—The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects under section 608(a)(3)(A).

(C) LIMITED BUYDOWNS.—The interest rate of a secured loan under this section may not be lowered by more than the lower of—

(i) 1½ percentage points (150 basis points); or

(ii) the amount of the increase in the interest rate.

(5) MATURITY DATE.—The final maturity date of the secured loan shall be the lesser of—

(A) 35 years after the date of substantial completion of the project; and

(B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.

(6) NONSUBORDINATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(B) PREEXISTING INDENTURE.—

(i) IN GENERAL.—The Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—