

cant for assistance under this chapter has developed, and identified adequate revenues to implement, a plan for operating, maintaining, and repairing the project over the useful life of the project.

**(B) Special rule**

An eligible project described in section 3905(1) of this title that has not been specifically authorized by Congress shall not be eligible for Federal assistance for operations and maintenance.

**(b) Selection criteria**

**(1) Establishment**

The Secretary or the Administrator, as applicable, shall establish criteria for the selection of projects that meet the eligibility requirements of subsection (a), in accordance with paragraph (2).

**(2) Criteria**

The selection criteria shall include the following:

(A) The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public benefits, such as—

- (i) the reduction of flood risk;
- (ii) the improvement of water quality and quantity, including aquifer recharge;
- (iii) the protection of drinking water, including source water protection; and
- (iv) the support of international commerce.

(B) The extent to which the project financing plan includes public or private financing in addition to assistance under this chapter.

(C) The likelihood that assistance under this chapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(D) The extent to which the project uses new or innovative approaches.

(E) The amount of budget authority required to fund the Federal credit instrument made available under this chapter.

(F) The extent to which the project—

- (i) protects against extreme weather events, such as floods or hurricanes; or
- (ii) helps maintain or protect the environment.

(G) The extent to which a project serves regions with significant energy exploration, development, or production areas.

(H) The extent to which a project serves regions with significant water resource challenges, including the need to address—

- (i) water quality concerns in areas of regional, national, or international significance;
- (ii) water quantity concerns related to groundwater, surface water, or other water sources;
- (iii) significant flood risk;
- (iv) water resource challenges identified in existing regional, State, or multistate agreements; or
- (v) water resources with exceptional recreational value or ecological importance.

(I) The extent to which the project addresses identified municipal, State, or regional priorities.

(J) The readiness of the project to proceed toward development, including a demonstration by the obligor that there is 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.

(K) The extent to which assistance under this chapter reduces the contribution of Federal assistance to the project.

**(3) Special rule for certain combined projects**

For a project described in section 3905(8) of this title, the Administrator shall only consider the criteria described in subparagraphs (B) through (K) of paragraph (2).

**(c) Federal requirements**

Nothing in this section supersedes the applicability of other requirements of Federal law (including regulations).

(Pub. L. 113–121, title V, § 5028, June 10, 2014, 128 Stat. 1335.)

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

**§ 3908. Secured loans**

**(a) Agreements**

**(1) In general**

Subject to paragraphs (2) and (3), the Secretary or the Administrator, as applicable, may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used to finance eligible project costs of any project selected under section 3907 of this title.

**(2) Financial risk assessment**

Before entering into an agreement under this subsection for a secured loan, the Secretary or the Administrator, as applicable, in consultation with the Director of the Office of Management and Budget and each rating agency providing a rating opinion letter under section 3907(a)(1)(D) of this title, shall determine an appropriate capital reserve subsidy amount for the secured loan, taking into account each such rating opinion letter.

**(3) Investment-grade rating requirement**

The execution of a secured loan under this section shall be contingent on receipt by the senior obligations of the project of an investment-grade rating.

**(b) Terms and limitations**

**(1) In general**

A secured loan provided for a project under this section shall be subject to such terms and conditions, and contain such covenants, representations, warranties, and requirements (including requirements for audits), as the Secretary or the Administrator, as applicable, determines to be appropriate.

**(2) Maximum amount**

The amount of a secured loan under this section shall not exceed the lesser of—

(A) an amount equal to 49 percent of the reasonably anticipated eligible project costs; and

(B) if the secured loan does not receive an investment-grade rating, the amount of the senior project obligations of the project.

**(3) Payment**

A secured loan under this section—

(A) shall be payable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the relevant project;

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

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

**(4) Interest rate**

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.

**(5) Maturity date**

**(A) In general**

The final maturity date of a secured loan under this section shall be the earlier of—

(i) the date that is 35 years after the date of substantial completion of the relevant project (as determined by the Secretary or the Administrator, as applicable); and

(ii) if the useful life of the project (as determined by the Secretary or Administrator, as applicable) is less than 35 years, the useful life the project.

**(B) Special rule for State infrastructure financing authorities**

The final maturity date of a secured loan to a State infrastructure financing authority under this section shall be not later than 35 years after the date on which amounts are first disbursed.

**(6) Nonsubordination**

A secured loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor of the project.

**(7) Fees**

The Secretary or the Administrator, as applicable, may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

**(8) Non-Federal share**

The proceeds of a secured loan under this section may be used to pay any non-Federal share of project costs required if the loan is repayable from non-Federal funds.

**(9) Maximum Federal involvement**

**(A) In general**

Except as provided in subparagraph (B), for each project for which assistance is pro-

vided under this chapter, the total amount of Federal assistance shall not exceed 80 percent of the total project cost.

**(B) Exceptions**

Subparagraph (A) shall not apply to any rural water project—

(i) that is authorized to be carried out by the Secretary of the Interior;

(ii) that includes among its beneficiaries a federally recognized Indian tribe; and

(iii) for which the authorized Federal share of the total project costs is greater than the amount described in subparagraph (A).

**(c) Repayment**

**(1) Schedule**

The Secretary or the Administrator, as applicable, shall establish a repayment schedule for each secured loan provided under this section, based on the projected cash flow from project revenues and other repayment sources.

**(2) Commencement**

**(A) In general**

Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project (as determined by the Secretary or Administrator, as applicable).

**(B) Special rule for State infrastructure financing authorities**

Scheduled loan repayments of principal or interest on a secured loan to a State infrastructure financing authority under this chapter shall commence not later than 5 years after the date on which amounts are first disbursed.

**(3) Deferred payments**

**(A) Authorization**

If, at any time after the date of substantial completion of a project for which a secured loan is provided under this section, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary or the Administrator, as applicable, subject to subparagraph (C), may allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

**(B) Interest**

Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the secured loan.

**(C) Criteria**

**(i) In general**

Any payment deferral under subparagraph (A) shall be contingent on the project meeting such criteria as the Secretary or the Administrator, as applicable, may establish.

**(ii) Repayment standards**

The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

**(4) Prepayment****(A) Use of excess revenues**

Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay a secured loan under this section without penalty.

**(B) Use of proceeds of refinancing**

A secured loan under this section may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

**(d) Sale of secured loans****(1) In general**

Subject to paragraph (2), as soon as practicable after the date of substantial completion of a project and after providing a notice to the obligor, the Secretary or the Administrator, as applicable, may sell to another entity or reoffer into the capital markets a secured loan for a project under this section, if the Secretary or the Administrator, as applicable, determines that the sale or reoffering can be made on favorable terms.

**(2) Consent of obligor**

In making a sale or reoffering under paragraph (1), the Secretary or the Administrator, as applicable, may not change the original terms and conditions of the secured loan without the written consent of the obligor.

**(e) Loan guarantees****(1) In general**

The Secretary or the Administrator, as applicable, may provide a loan guarantee to a lender in lieu of making a secured loan under this section, if the Secretary or the Administrator, as applicable, determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

**(2) Terms**

The terms of a loan guarantee provided under this subsection shall be consistent with the terms established in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary or the Administrator, as applicable.

(Pub. L. 113–121, title V, § 5029, June 10, 2014, 128 Stat. 1338.)

**“SECRETARY” DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

**§ 3909. Program administration****(a) Requirement**

The Secretary or the Administrator, as applicable, shall establish a uniform system to serv-

ice the Federal credit instruments made available under this chapter.

**(b) Fees****(1) In general**

The Secretary or the Administrator, as applicable, may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover—

(A) the costs of services of expert firms retained pursuant to subsection (d); and

(B) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments provided under this chapter.

**(c) Servicer****(1) In general**

The Secretary or the Administrator, as applicable, may appoint a financial entity to assist the Secretary or the Administrator in servicing the Federal credit instruments provided under this chapter.

**(2) Duties**

A servicer appointed under paragraph (1) shall act as the agent for the Secretary or the Administrator, as applicable.

**(3) Fee**

A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary or the Administrator, as applicable.

**(d) Assistance from experts**

The Secretary or the Administrator, as applicable, may retain the services, including counsel, of organizations and entities with expertise in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments provided under this chapter.

**(e) Applicability of other laws**

Section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) applies to the construction of a project carried out, in whole or in part, with assistance made available through a Federal credit instrument under this chapter in the same manner that section applies to a treatment works for which a grant is made available under that Act [33 U.S.C. 1251 et seq.].

(Pub. L. 113–121, title V, § 5030, June 10, 2014, 128 Stat. 1341.)

**REFERENCES IN TEXT**

The Federal Water Pollution Control Act, referred to in subsec. (e), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

**“SECRETARY” DEFINED**

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

**§ 3910. State, tribal, and local permits**

The provision of financial assistance for a project under this chapter shall not—