

(Pub. L. 106-553, §1(a)(2) [title X, §1003], Dec. 21, 2000, 114 Stat. 2762, 2762A-128.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original “this Act”, and was translated as reading “this title”. See References in Text note set out under section 1101 of this title.

Section 1103 of this title, referred to in subsec. (c)(1), was in the original “section 4”, and was translated as reading “section 1004”, meaning section 1004 of title X of H.R. 5548, as enacted by Pub. L. 106-553, §1(a)(2), to reflect the probable intent of Congress. Pub. L. 106-553 does not contain a section 4 and section 1004 relates to approval of loan guarantees.

§ 1103. Approval of loan guarantees

(a) Authority to approve loan guarantees

Subject to the provisions of this section and consistent with the purpose of this chapter, the Board may approve loan guarantees under this chapter.

(b) Regulations

(1) Requirements

The Administrator (as defined in section 1104 of this title), under the direction of and for approval by the Board, shall prescribe regulations to implement the provisions of this chapter and shall do so not later than 120 days after funds authorized to be appropriated under section 1109 of this title have been appropriated in a bill signed into law.

(2) Elements

The regulations prescribed under paragraph (1) shall—

(A) set forth the form of any application to be submitted to the Board under this chapter;

(B) set forth time periods for the review and consideration by the Board of applications to be submitted to the Board under this chapter, and for any other action to be taken by the Board with respect to such applications;

(C) provide appropriate safeguards against the evasion of the provisions of this chapter;

(D) set forth the circumstances in which an applicant, together with any affiliate of an applicant, shall be treated as an applicant for a loan guarantee under this chapter;

(E) include requirements that appropriate parties submit to the Board any documents and assurances that are required for the administration of the provisions of this chapter; and

(F) include such other provisions consistent with the purpose of this chapter as the Board considers appropriate.

(3) Construction

(A) Nothing in this chapter shall be construed to prohibit the Board from requiring, to the extent and under circumstances considered appropriate by the Board, that affiliates of an applicant be subject to certain obligations of the applicant as a condition to the approval or maintenance of a loan guarantee under this chapter.

(B) If any provision of this chapter or the application of such provision to any person or

entity or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of this chapter, or the application of such provision to such person or entity or circumstance other than those as to which it is held invalid, shall not be affected thereby.

(c) Authority limited by appropriations acts

The Board may approve loan guarantees under this chapter only to the extent provided for in advance in appropriations Acts, and the Board may accept credit risk premiums from a non-Federal source in order to cover the cost of a loan guarantee under this chapter, to the extent that appropriations of budget authority are insufficient to cover such costs.

(d) Requirements and criteria applicable to approval

(1) In general

The Board shall utilize the underwriting criteria developed under subsection (g) of this section, and any relevant information provided by the departments and agencies with which the Board consults under section 1102 of this title, to determine which loans may be eligible for a loan guarantee under this chapter.

(2) Prerequisites

In addition to meeting the underwriting criteria under paragraph (1), a loan may not be guaranteed under this chapter unless—

(A) the loan is made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which local television broadcast signals will be delivered to a non-served area or underserved area;

(B) the proceeds of the loan will not be used for operating, advertising, or promotion expenses, or for the acquisition of licenses for the use of spectrum in any competitive bidding under section 309(j) of this title;

(C) the proposed project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in a non-served area or underserved area and is commercially viable;

(D)(i) the loan—

(I) is provided by any entity engaged in the business of commercial lending—

(aa) if the loan is made in accordance with loan-to-one-borrower and affiliate transaction restrictions to which the entity is subject under applicable law; or

(bb) if item (aa) does not apply, the loan is made only to a borrower that is not an affiliate of the entity and only if the amount of the loan and all outstanding loans by that entity to that borrower and any of its affiliates does not exceed 10 percent of the net equity of the entity; or

(II) is provided by a nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, en-

gaged primarily in commercial lending, if the Board determines that such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest 3 rating categories of a nationally recognized statistical rating organization;

(ii) if the loan is provided by a lender described in clause (i)(II) and the Board determines that the making of the loan by such lender will cause a decline in such lender's debt rating as described in that clause, the Board at its discretion may disapprove the loan guarantee on this basis;

(iii) no loan may be made for purposes of this chapter by a governmental entity or affiliate thereof, or by the Federal Agricultural Mortgage Corporation, or any institution supervised by the Federal Housing Finance Agency, or any affiliate of such entities;

(iv) any loan must have terms, in the judgment of the Board, that are consistent in material respects with the terms of similar obligations in the private capital market;

(v) for purposes of clause (i)(I)(bb), the term "net equity" means the value of the total assets of the entity, less the total liabilities of the entity, as recorded under generally accepted accounting principles for the fiscal quarter ended immediately prior to the date on which the subject loan is approved;

(E) repayment of the loan is required to be made within a term of the lesser of—

(i) 25 years from the date of the execution of the loan; or

(ii) the economically useful life, as determined by the Board or in consultation with persons or entities deemed appropriate by the Board, of the primary assets to be used in the delivery of the signals concerned; and

(F) the loan meets any additional criteria developed under subsection (g) of this section.

(3) Protection of United States financial interests

The Board may not approve the guarantee of a loan under this chapter unless—

(A) the Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to the review of the loan by the Board for purposes of this chapter; and

(B) the Board makes a determination in writing that—

(i) to the best of its knowledge upon due inquiry, the assets, facilities, or equipment covered by the loan will be utilized economically and efficiently;

(ii) the terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the loan protect the financial interests of the United States and are reasonable;

(iii) the value of collateral provided by an applicant is at least equal to the unpaid

balance of the loan amount covered by the loan guarantee (the "Amount" for purposes of this clause); and if the value of collateral provided by an applicant is less than the Amount, the additional required collateral is provided by any affiliate of the applicant;

(iv) all necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been received for the loan and the project under the loan;

(v) the loan would not be available on reasonable terms and conditions without a loan guarantee under this chapter; and

(vi) repayment of the loan can reasonably be expected.

(e) Considerations

(1) Type of market

(A) Priority considerations

To the maximum extent practicable, the Board shall give priority in the approval of loan guarantees under this chapter in the following order:

(i) First, to projects that will serve households in nonserved areas. In considering such projects, the Board shall balance projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms.

(ii) Second, to projects that will serve households in underserved areas. In considering such projects, the Board shall balance projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms.

Within each category, the Board shall consider the project's estimated cost per household and shall give priority to those projects that provide the highest quality service at the lowest cost per household.

(B) Additional consideration

The Board should give additional consideration to projects that also provide high-speed Internet service.

(C) Prohibitions

The Board may not approve a loan guarantee under this chapter for a project that—

(i) is designed primarily to serve 1 or more of the top 40 designated market areas (as that term is defined in section 122(j) of title 17); or

(ii) would alter or remove National Weather Service warnings from local broadcast signals.

(2) Other considerations

The Board shall consider other factors, which shall include projects that would—

(A) offer a separate tier of local broadcast signals, but for applicable Federal, State, or local laws or regulations;

(B) provide lower projected costs to consumers of such separate tier; and

(C) enable the delivery of local broadcast signals consistent with the purpose of this chapter by a means reasonably compatible with existing systems or devices predominantly in use.

(3) Further consideration

In implementing this chapter, the Board shall support the use of loan guarantees for projects that would serve households not likely to be served in the absence of loan guarantees under this chapter.

(f) Guarantee limits

(1) Limitation on aggregate value of loans

The aggregate value of all loans for which loan guarantees are issued under this chapter (including the unguaranteed portion of such loans) may not exceed \$1,250,000,000.

(2) Guarantee level

A loan guarantee issued under this chapter may not exceed an amount equal to 80 percent of a loan meeting in its entirety the requirements of subsection (d)(2)(A) of this section. If only a portion of a loan meets the requirements of that subsection, the Board shall determine that percentage of the loan meeting such requirements (the “applicable portion”) and may issue a loan guarantee in an amount not exceeding 80 percent of the applicable portion.

(g) Underwriting criteria

Within the period provided for under subsection (b)(1) of this section, the Board shall, in consultation with the Director of the Office of Management and Budget and an independent public accounting firm, develop underwriting criteria relating to the guarantee of loans that are consistent with the purpose of this chapter, including appropriate collateral and cash flow levels for loans guaranteed under this chapter, and such other matters as the Board considers appropriate.

(h) Credit risk premiums

(1) Establishment and acceptance

(A) In general

The Board may establish and approve the acceptance of credit risk premiums with respect to a loan guarantee under this chapter in order to cover the cost, as defined in section 661a(5) of title 2, of the loan guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a loan guarantee under this chapter, credit risk premiums shall be accepted from a non-Federal source under this subsection on behalf of the applicant for the loan guarantee.

(B) Authority limited by appropriations Acts

Credit risk premiums under this subsection shall be imposed only to the extent provided for in advance in appropriations Acts.

(2) Credit risk premium amount

(A) In general

The Board shall determine the amount of any credit risk premium to be accepted with

respect to a loan guarantee under this chapter on the basis of—

(i) the financial and economic circumstances of the applicant for the loan guarantee, including the amount of collateral offered;

(ii) the proposed schedule of loan disbursements;

(iii) the business plans of the applicant for providing service;

(iv) any financial commitment from a broadcast signal provider; and

(v) the concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(B) Proportionality

To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 661a(5) of title 2, of loan guarantees under this chapter, the credit risk premium with respect to each loan guarantee shall be reduced proportionately.

(C) Payment of premiums

Credit risk premiums under this subsection shall be paid to an account (the “Escrow Account”) established in the Treasury which shall accrue interest and such interest shall be retained by the account, subject to subparagraph (D).

(D) Deductions from Escrow Account

If a default occurs with respect to any loan guaranteed under this chapter and the default is not cured in accordance with the terms of the underlying loan or loan guarantee agreement, the Administrator, in accordance with subsections (i) and (j) of section 1104 of this title, shall liquidate, or shall cause to be liquidated, all assets collateralizing such loan as to which it has a lien or security interest. Any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid pursuant to this chapter shall be deducted from funds in the Escrow Account and credited to the Administrator for payment of such shortfall. At such time as determined under subsection (d)(2)(E) of this section when all loans guaranteed under this chapter have been repaid or otherwise satisfied in accordance with this chapter and the regulations promulgated hereunder, remaining funds in the Escrow Account, if any, shall be refunded, on a pro rata basis, to applicants whose loans guaranteed under this chapter were not in default, or where any default was cured in accordance with the terms of the underlying loan or loan guarantee agreement.

(i) Limitations on guarantees for certain cable operators

Notwithstanding any other provision of this chapter, no loan guarantee under this chapter may be granted or used to provide funds for a project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of December 21, 2000, is covered by

a cable franchise agreement that expressly obligates a cable system operator to serve such area.

(j) Judicial review

The decision of the Board to approve or disapprove the making of a loan guarantee under this chapter shall not be subject to judicial review.

(k) Applicability of APA

Except as otherwise provided in subsection (j) of this section, the provisions of subchapter II of chapter 5 and chapter 7 of title 5 (commonly referred to as the Administrative Procedure Act), shall apply to actions taken under this chapter.

(Pub. L. 106-553, §1(a)(2) [title X, §1004], Dec. 21, 2000, 114 Stat. 2762, 2762A-129; Pub. L. 107-171, title VI, §6404(b)(1), May 13, 2002, 116 Stat. 430; Pub. L. 110-289, div. A, title II, §1216(f), July 30, 2008, 122 Stat. 2792.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, and was translated as reading “this title”. See References in Text note set out under section 1101 of this title.

AMENDMENTS

2008—Subsec. (d)(2)(D)(iii). Pub. L. 110-289 substituted “Federal Housing Finance Agency” for “Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board”.

2002—Subsec. (b)(1). Pub. L. 107-171, §6404(b)(1)(A), made technical amendments to references in original Act which appear in text as references to sections 1104 and 1109 of this title.

Subsec. (d)(1). Pub. L. 107-171, §6404(b)(1)(B), made technical amendment to reference in original Act which appears in text as a reference to section 1102 of this title.

Subsec. (h)(2)(D). Pub. L. 107-171, §6404(b)(1)(C), made technical amendment to reference in original Act which appears in text as a reference to section 1104 of this title.

§ 1104. Administration of loan guarantees

(a) In general

The Administrator of the Rural Utilities Service (in this chapter referred to as the “Administrator”) shall issue and otherwise administer loan guarantees that have been approved by the Board in accordance with sections 1102 and 1103 of this title.

(b) Security for protection of United States financial interests

(1) Terms and conditions

An applicant shall agree to such terms and conditions as are satisfactory, in the judgment of the Board, to ensure that, as long as any principal or interest is due and payable on a loan guaranteed under this chapter, the applicant—

(A) shall maintain assets, equipment, facilities, and operations on a continuing basis;

(B) shall not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under this chapter;

(C) shall remain sufficiently capitalized; and

(D) shall submit to, and cooperate fully with, any audit of the applicant under section 1105(a)(2) of this title.

(2) Collateral

(A) Existence of adequate collateral

An applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate collateral secures a loan guaranteed under this chapter.

(B) Form of collateral

Collateral required by subparagraph (A) shall consist solely of assets of the applicant, any affiliate of the applicant, or both (whichever the Board considers appropriate), including primary assets to be used in the delivery of signals for which the loan is guaranteed.

(C) Review of valuation

The value of collateral securing a loan guaranteed under this chapter may be reviewed by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate.

(3) Lien on interests in assets

Upon the Board’s approval of a loan guarantee under this chapter, the Administrator shall have liens on assets securing the loan, which shall be superior to all other liens on such assets, and the value of the assets (based on a determination satisfactory to the Board) subject to the liens shall be at least equal to the unpaid balance of the loan amount covered by the loan guarantee, or that value approved by the Board under section 1103(d)(3)(B)(iii) of this title.

(4) Perfected security interest

With respect to a loan guaranteed under this chapter, the Administrator and the lender shall have a perfected security interest in assets securing the loan that are fully sufficient to protect the financial interests of the United States and the lender.

(5) Insurance

In accordance with practices in the private capital market, as determined by the Board, the applicant for a loan guarantee under this chapter shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

(c) Assignment of loan guarantees

The holder of a loan guarantee under this chapter may assign the loan guaranteed under this chapter in whole or in part, subject to such requirements as the Board may prescribe.

(d) Expiration of loan guarantee upon stripping

Notwithstanding subsections (c), (e), and (h) of this section, a loan guarantee under this chapter shall have no force or effect if any part of the guaranteed portion of the loan is transferred separate and apart from the unguaranteed portion of the loan.