

(1) the Board has received an audited financial statement of the enterprise; and

(2) the enterprise permits the Board to have the same access to its books and other documents as the Board would have under section 1846 of this title in the event the loan is guaranteed.

(d) Exhaustion of remedies

No payment shall be made or become due under a guarantee entered into under this chapter unless the lender has exhausted any remedies which it may have under the guarantee agreement.

(e) Protective provisions; advances

(1) Prior to making any guarantee under this chapter, the Board shall satisfy itself that the underlying loan agreement on which the guarantee is sought contains all the affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that it cannot be amended, or any provisions waived, without the Board's prior consent.

(2) On each occasion when the borrower seeks an advance under the loan agreement, the guarantee authorized by this chapter shall be in force as to the funds advanced only if—

(A) the lender gives the Board at least ten days' notice in writing of its intent to provide the borrower with funds pursuant to the loan agreement;

(B) the lender certifies to the Board before an advance is made that, as of the date of the notice provided for in subparagraph (A), the borrower is not in default under the loan agreement: *Provided*, That if a default has occurred the lender shall report the facts and circumstances relating thereto to the Board and the Board may expressly and in writing waive such default in any case where it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee; and

(C) the borrower provides the Board with a plan setting forth the expenditures for which the advance will be used and the period during which the expenditures will be made, and, upon the expiration of such periods, reports to the Board any instances in which amounts advanced have not been expended in accordance with the plan.

(f) Loan security, priority; collateral

(1) A guarantee agreement made under this chapter shall contain a requirement that as between the Board and the lender, the Board shall have a priority with respect to, and to the extent of, the lender's interest in any collateral securing the loan and any earlier outstanding loans. The Board shall take all steps necessary to assure such priority against any other persons.

(2) As used in paragraph (1) of this subsection, the term "collateral" includes all assets pledged under loan agreements and, if appropriate in the opinion of the Board, all sums of the borrower on deposit with the lender and subject to offset under section 68 of the Bankruptcy Act.

(Pub. L. 92-70, § 6, Aug. 9, 1971, 85 Stat. 179.)

REFERENCES IN TEXT

Section 68 of the Bankruptcy Act, referred to in subsec. (f)(2), was classified to section 108 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. See sections 502(b)(3) and 553 of Title 11.

§ 1846. Powers and duties

(a) Board; inspection of documents; disapproval of certain transactions

The Board is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents of any enterprise which has received financial assistance under this chapter concerning any matter which may bear upon (1) the ability of such enterprise to repay the loan within the time fixed therefor; (2) the interests of the United States in the property of such enterprise; and (3) the assurance that there is reasonable protection to the United States. The Board is authorized to disapprove any transaction of such enterprise involving the disposition of its assets which may affect the repayment of a loan that has been guaranteed pursuant to the provisions of this chapter.

(b) Government Accountability Office; audit; report to Board and Congress

The Government Accountability Office shall make a detailed audit of all accounts, books, records, and transactions of any borrower with respect to which an application for a loan guarantee is made under this chapter. The Government Accountability Office shall report the results of such audit to the Board and to the Congress.

(Pub. L. 92-70, § 7, Aug. 9, 1971, 85 Stat. 180; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office" in two places.

§ 1847. Maximum obligation

The maximum obligation of the Board under all outstanding loans guaranteed by it shall not exceed at any time \$250,000,000.

(Pub. L. 92-70, § 8, Aug. 9, 1971, 85 Stat. 181.)

§ 1848. Emergency loan guarantee fund

(a) Establishment; use; investment

There is established in the Treasury an emergency loan guarantee fund to be administered by the Board. The fund shall be used for the payment of the expenses of the Board and for the purpose of fulfilling the Board's obligations under this chapter. Moneys in the fund not needed for current operations may be invested in direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof.

(b) Guarantee fee; deposits in fund

The Board shall prescribe and collect a guarantee fee in connection with each loan guaran-

ted by it under this chapter. Sums realized from such fees shall be deposited in the emergency loan guarantee fund.

(c) Payments; issuance of notes or other obligations when fund moneys insufficient: forms and denominations, maturities, terms and conditions, interest rate; public debt transaction

Payments required to be made as a consequence of any guarantee by the Board shall be made from the emergency loan guarantee fund. In the event that moneys in the fund are insufficient to make such payments, in order to discharge its responsibilities, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Board with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31 and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations.

(Pub. L. 92-70, §9, Aug. 9, 1971, 85 Stat. 181.)

CODIFICATION

In subsec. (c), “chapter 31 of title 31” and “that chapter” substituted for “the Second Liberty Bond Act, as amended,” and “that Act”, respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 1849. Federal Reserve banks as fiscal agents

Any Federal Reserve bank which is requested to do so shall act as fiscal agent for the Board. Each such fiscal agent shall be reimbursed by the Board for all expenses and losses incurred by it in acting as agent on behalf of the Board.

(Pub. L. 92-70, §10, Aug. 9, 1971, 85 Stat. 181.)

§ 1850. Protection of Government's interest

(a) Attorney General, enforcement authority; payments into emergency loan guarantee fund

The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States or any officer or agency thereof as a result of the issuance of guarantees under this chapter. Any sums recovered pursuant to this section shall be paid into the emergency loan guarantee fund.

(b) Recovery rights; subrogation

The Board shall be entitled to recover from the borrower, or any other person liable there-

for, the amount of any payments made pursuant to any guarantee agreement entered into under this chapter, and upon making any such payment, the Board shall be subrogated to all the rights of the recipient thereof.

(Pub. L. 92-70, §11, Aug. 9, 1971, 85 Stat. 181.)

§ 1851. Reports to Congress; recommendations

The Board shall submit to the Congress annually a full report of its operations under this chapter. In addition, the Board shall submit to the Congress a special report not later than June 30, 1973, which shall include a full report of the Board's operations together with its recommendations with respect to the need to continue the guarantee program beyond the termination date specified in section 1852 of this title. If the Board recommends that the program should be continued beyond such termination date, it shall state its recommendations with respect to the appropriate board, agency, or corporation which should administer the program.

(Pub. L. 92-70, §12, Aug. 9, 1971, 85 Stat. 182.)

§ 1852. Termination date

The authority of the Board to enter into any guarantee or to make any commitment to guarantee under this chapter terminates on December 31, 1973. Such termination does not affect the carrying out of any contract, guarantee, commitment, or other obligation entered into pursuant to this chapter prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this chapter.

(Pub. L. 92-70, §13, Aug. 9, 1971, 85 Stat. 182.)

**CHAPTER 45A—CHRYSLER CORPORATION
LOAN GUARANTEE**

§§ 1861 to 1875. Omitted

CODIFICATION

Sections, Pub. L. 96-185, §§1-16, Jan. 7, 1980, 93 Stat. 1324, were omitted in view of the termination of authority to make commitments to guarantee or issue guarantees under this chapter on Dec. 31, 1983, pursuant to section 1875 of this title, and the total repayment of loans guaranteed under this chapter.

Section 1861 provided definitions for this chapter.

Section 1862 related to establishment and composition of Chrysler Corporation Loan Guarantee Board.

Section 1863 related to commitments for loan guarantees.

Section 1864 related to requirements of loan guarantees.

Section 1865 related to requirements applicable to employees.

Section 1866 related to employee stock ownership plan.

Section 1867 related to limitations on guarantee authority.

Section 1868 related to terms and conditions of loan guarantees.

Section 1869 related to inspection, audit, and investigation.

Section 1870 related to protection of Government's interest.

Section 1871 related to long-term planning study.

Section 1872 related to ineligibility of guaranteed loans for purchase by or sale or issuance to Federal Financing Bank or other Federal entity partly or wholly owned by United States.