

(3) Special rule for certain combined projects

For a project described in section 3905(9) 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; Pub. L. 114–94, div. A, title I, § 1445, Dec. 4, 2015, 129 Stat. 1437; Pub. L. 114–322, title IV, § 5008(b)(2)(D), Dec. 16, 2016, 130 Stat. 1897.)

AMENDMENTS

2016—Subsec. (a)(1)(E). Pub. L. 114–322, § 5008(b)(2)(D)(i), substituted “section 3905(9)” for “section 3905(8)” and “section 3905(10)” for “section 3905(9)”.

Subsec. (b)(3). Pub. L. 114–322, § 5008(b)(2)(D)(ii), substituted “section 3905(9)” for “section 3905(8)”.

2015—Subsec. (a)(5) to (7). Pub. L. 114–94 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5). Prior to amendment, text of par. (5) read as follows: “No project receiving Federal credit assistance under this chapter may be financed (directly or indirectly), in whole or in part, with proceeds of any obligation—

“(A) the interest on which is exempt from the tax imposed under chapter 1 of title 26; or

“(B) with respect to which credit is allowable under subpart I or J of part IV of subchapter A of chapter 1 of title 26.”

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

“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**(A) In general**

Except as provided in subparagraph (B), the Secretary or the Administrator, as ap-

plicable, 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.

(B) Financing fees

On request of an eligible entity, the Secretary or the Administrator, as applicable, shall allow the fees under subparagraph (A) to be financed as part of the loan.

(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 provided 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).

(10) Credit

Any eligible project costs incurred and the value of any integral in-kind contributions made before receipt of assistance under this chapter shall be credited toward the 51 percent of project costs to be provided by sources of funding other than a secured loan under this chapter (as described in paragraph (2)(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 se-

cured 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; Pub. L. 114–322, title IV, § 5008(c), Dec. 16, 2016, 130 Stat. 1897.)

AMENDMENTS

2016—Subsec. (b)(7). Pub. L. 114–322, § 5008(c)(1), designated existing provisions as subpar. (A), inserted heading, substituted “Except as provided in subparagraph (B), the Secretary” for “The Secretary”, and added subpar. (B).

Subsec. (b)(10). Pub. L. 114–322, § 5008(c)(2), added par. (10).

“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 service 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—

(1) relieve any recipient of the assistance of any obligation to obtain any required State, local, or tribal permit or approval with respect to the project;

(2) limit the right of any unit of State, local, or tribal government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State, local, or tribal law (including any regulation) applicable to the construction or operation of the project.

(Pub. L. 113–121, title V, § 5031, June 10, 2014, 128 Stat. 1342.)

§ 3911. Regulations

The Secretary or the Administrator, as applicable, may promulgate such regulations as the Secretary or Administrator determines to be appropriate to carry out this chapter.

(Pub. L. 113–121, title V, § 5032, June 10, 2014, 128 Stat. 1342.)

“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.

§ 3912. Funding

(a) In general

There is authorized to be appropriated to each of the Secretary and the Administrator to carry