

(8) “Secretary” means the Secretary of Transportation or his designated representative.

(Pub. L. 94-210, title I, §102, Feb. 5, 1976, 90 Stat. 33; Pub. L. 97-468, title VI, §615(b)(2), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 104-88, title III, §330(1), Dec. 29, 1995, 109 Stat. 953; Pub. L. 109-59, title IX, §9003(a), Aug. 10, 2005, 119 Stat. 1921.)

#### REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94-210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Regional Rail Reorganization Act of 1973, referred to in par. (4), is Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

#### AMENDMENTS

2005—Par. (7). Pub. L. 109-59 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “‘railroad’ means a rail carrier subject to part A of subtitle IV of title 49, and includes the National Railroad Passenger Corporation; and”.

1995—Par. (7). Pub. L. 104-88 substituted “rail carrier subject to part A of subtitle IV of title 49” for “common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))”.

1983—Par. (7). Pub. L. 97-468 struck out “and the Alaska Railroad” before the semicolon at end.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title, see section 615(b) of Pub. L. 97-468.

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

#### ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

### § 803. Repealed. Pub. L. 97-449, §7(b), Jan. 12, 1983, 96 Stat. 2443

Section, Pub. L. 94-210, title IX, §905, Feb. 5, 1976, 90 Stat. 148, directed that no person in the United States be discriminated against on the basis of race, color, national origin, or sex with regard to any activity funded in whole or in part under this Act and provided for cutoff of funds to and civil action against any person who persisted in failure to comply. See section 306 of Title 49, Transportation.

## SUBCHAPTER II—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

### § 821. Definitions

For purposes of this subchapter:

(1)(A) The term “cost” means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(i) Loan disbursements.

(ii) Repayments of principal.

(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

Calculation of the cost of a direct loan shall include the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(i) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments.

(ii) Payments to the Government, including origination and other fees, penalties, and recoveries.

Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

(2) The term “current” has the same meaning as in section 900(c)(9) of title 2.

(3) The term “direct loan” means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds. The term

includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims.

(4) The term “direct loan obligation” means a binding agreement by the Secretary to make a direct loan when specified conditions are fulfilled by the borrower.

(5) The term “intermodal” means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(6) The term “investment-grade rating” means a rating of BBB minus, Baa 3, bbb minus, BBB(low), or higher assigned by a rating agency.

(7) The term “loan guarantee” means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(8) The term “loan guarantee commitment” means a binding agreement by the Secretary to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(9) The term “master credit agreement” means an agreement to make 1 or more direct loans or loan guarantees at future dates for a program of related projects on terms acceptable to the Secretary.

(10) The term “modification” means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

(11) The term “project obligation” means a note, bond, debenture, or other debt obligation issued by a borrower in connection with the financing of a project, other than a direct loan or loan guarantee under this subchapter.

(12) The term “railroad” has the meaning given the term “railroad carrier” in section 20102 of title 49.

(13) The term “rating agency” means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in section 78c(a) of title 15).

(14) The term “substantial completion” means—

(A) the opening of a project to passenger or freight traffic; or

(B) a comparable event, as determined by the Secretary and specified in the terms of the direct loan or loan guarantee provided by the Secretary.

(Pub. L. 94-210, title V, §501, as added Pub. L. 105-178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471; amended Pub. L. 114-94, div. A, title XI, §11602, Dec. 4, 2015, 129 Stat. 1693.)

#### PRIOR PROVISIONS

A prior section 821, Pub. L. 94-210, title V, §501, Feb. 5, 1976, 90 Stat. 66; Pub. L. 95-620, title VIII, §803(c)(1), Nov. 9, 1978, 92 Stat. 3347; Pub. L. 96-101, §24(b), Nov. 4, 1979, 93 Stat. 747; Pub. L. 96-448, title IV, §405(d), Oct. 14, 1980, 94 Stat. 1947; Pub. L. 97-35, title XI, §1162(b), Aug. 13, 1981, 95 Stat. 684; Pub. L. 99-509, title IV, §4033(c)(2), Oct. 21, 1986, 100 Stat. 1908, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 105-178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471.

#### AMENDMENTS

2015—Pars. (6) to (8). Pub. L. 114-94, §11602(2), (3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (10).

Par. (9). Pub. L. 114-94, §11602(4), added par. (9).

Par. (10). Pub. L. 114-94, §11602(1), redesignated par. (8) as (10).

Pars. (11) to (14). Pub. L. 114-94, §11602(5), added pars. (11) to (14).

#### 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.

#### SAVINGS PROVISION

Pub. L. 114-94, div. A, title XI, §11607(b), Dec. 4, 2015, 129 Stat. 1699, provided that: “All provisions under sections 502 through 504 [45 U.S.C. 822, 823, 836] of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) as they existed on the day before enactment of this Act shall apply to direct loans provided by the Secretary [of Transportation] prior to the date of enactment of this Act [Dec. 4, 2015], and nothing in this title [see Tables for classification] may be construed to limit the payback of a credit risk premium, with interest accrued thereon, if a direct loan provided by the Secretary under such sections has been paid back in full, prior to the date of enactment of this Act.”

Pub. L. 114-94, div. A, title XI, §11610, Dec. 4, 2015, 129 Stat. 1700, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b) and section 11607(b) [set out above], this subtitle [see Short Title of 2015 Amendment note set out under section 801 of this title], and the amendments made by this subtitle, shall not affect any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act [Dec. 4, 2015]. Any such transaction entered into before the date of enactment of this Act shall be administered until completion under its terms as if this Act [div. A of Pub. L. 114-94, see Tables for classification] were not enacted.

“(b) MODIFICATION COSTS.—At the discretion of the Secretary [of Transportation], the authority to accept modification costs on behalf of an applicant under section 502(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)), as amended by section 11607 of this Act, may apply with respect to any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act.”

Pub. L. 105-178, title VII, §7203(b)(2), June 9, 1998, 112 Stat. 477, provided that: “A transaction entered into

under the authority of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) before the date of enactment of this Act [June 9, 1998] shall be administered until completion under its terms as if this Act [see Tables for classification] were not enacted.”

## § 822. Direct loans and loan guarantees

### (a) General authority

The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;
- (2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);
- (3) government sponsored authorities and corporations;
- (4) railroads;
- (5) joint ventures that include at least 1 of the entities described in paragraph (1), (2), (3), (4), or (6); and
- (6) solely for the purpose of constructing a rail connection between a plant or facility and a railroad, limited option freight shippers that own or operate a plant or other facility.

### (b) Eligible purposes

#### (1) In general

Direct loans and loan guarantees under this section shall be used to—

- (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs;
- (B) refinance outstanding debt incurred for the purposes described in subparagraph (A) or (C);
- (C) develop or establish new intermodal or railroad facilities;
- (D) reimburse planning and design expenses relating to activities described in subparagraph (A) or (C); or
- (E) finance economic development, including commercial and residential development, and related infrastructure and activities, that—
  - (i) incorporates private investment;
  - (ii) is physically or functionally related to a passenger rail station or multimodal station that includes rail service;
  - (iii) has a high probability of the applicant commencing the contracting process for construction not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project under this subchapter; and
  - (iv) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs.

#### (2) Operating expenses not eligible

Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

### (3) Sunset

The Secretary may provide a direct loan or loan guarantee under this section for a project described in paragraph (1)(E) only during the 4-year period beginning on December 4, 2015.

### (c) Priority projects

In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

- (1) enhance public safety, including projects for the installation of a positive train control system (as defined in section 20157(i) of title 49);
- (2) promote economic development;
- (3) enhance the environment;
- (4) enable United States companies to be more competitive in international markets;
- (5) are endorsed by the plans prepared under section 135 of title 23 or chapter 227 of title 49 by the State or States in which they are located;
- (6) improve railroad stations and passenger facilities and increase transit-oriented development;
- (7) preserve or enhance rail or intermodal service to small communities or rural areas;
- (8) enhance service and capacity in the national rail system; or
- (9) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

### (d) Extent of authority

The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$35,000,000,000 at any one time. Of this amount, not less than \$7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

### (e) Rates of interest

#### (1) Direct loans

The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

#### (2) Loan guarantees

The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

### (f) Infrastructure partners

#### (1) Authority of Secretary

In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, including the cost of a modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment