

Subsec. (f)(4). Pub. L. 114-94, § 11607(a)(4), (6), redesignated par. (3) as (4) and substituted “amounts (and in the case of a modification, before the modification is executed), to the extent appropriations are not available to the Secretary to meet the costs of direct loans and loan guarantees, including costs of modifications thereof” for “amounts”.

Pub. L. 114-94, § 11607(a)(3), struck out par. (4). Text read as follows: “In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis. A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.”

Subsec. (g)(1). Pub. L. 114-94, § 11606(a), substituted “the lesser of—” for “35 years from the date of its execution;” and added subpars. (A) and (B).

Subsec. (h)(2). Pub. L. 114-94, § 11609(b), inserted “, if applicable” after “project”.

Subsec. (h)(4). Pub. L. 114-94, § 11604(b), added par. (4).

Subsec. (i). Pub. L. 114-94, § 11605(a), amended subsec. (i) generally. Prior to amendment, text read as follows: “Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.”

Subsec. (j)(1). Pub. L. 114-94, § 11606(b)(1), substituted “5 years after the date of substantial completion” for “the sixth anniversary date of the original loan disbursement”.

Subsec. (j)(3), (4). Pub. L. 114-94, § 11606(b)(2), added pars. (3) and (4).

Subsec. (k). Pub. L. 114-94, § 11606(c), added subsec. (k).

Subsec. (l). Pub. L. 114-94, § 11606(d), added subsec. (l).
Subsec. (m). Pub. L. 114-94, § 11608, added subsec. (m).
2008—Subsec. (g)(1). Pub. L. 110-432 substituted “35 years” for “25 years”.

2005—Subsec. (a). Pub. L. 109-59, § 9003(b), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “The Secretary may provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least 1 railroad.”

Subsec. (c)(7), (8). Pub. L. 109-59, § 9003(c), added pars. (7) and (8).

Subsec. (d). Pub. L. 109-59, § 9003(d), substituted “\$35,000,000,000” for “\$3,500,000,000” and “\$7,000,000,000” for “\$1,000,000,000” and inserted at end “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.”

Subsec. (f)(2)(A). Pub. L. 109-59, § 9003(f)(2), substituted “amount of collateral offered, if any;” for “amount of collateral offered;”

Subsec. (f)(2)(E), (F). Pub. L. 109-59, § 9003(e)(1)–(3), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (f)(4). Pub. L. 109-59, § 9003(e)(4), inserted at end “A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.”

Subsec. (h). Pub. L. 109-59, § 9003(f)(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (1), respectively, and added pars. (2) and (3).

Subsecs. (i), (j). Pub. L. 109-59, § 9003(g), added subsecs. (i) and (j).

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.

SUBSTANTIVE CRITERIA AND STANDARDS

Pub. L. 109-59, title IX, § 9003(j), Aug. 10, 2005, 119 Stat. 1923, provided that: “Not later than 30 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation Web site the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). The Secretary of Transportation shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of such publication.”

§ 823. Administration of direct loans and loan guarantees

(a) Applications

The Secretary shall prescribe the form and contents required of applications for assistance under section 822 of this title, to enable the Secretary to determine the eligibility of the applicant’s proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section, including a program guide, a standard term sheet, and specific time-tables.

(b) Full faith and credit

All guarantees entered into by the Secretary under section 822 of this title shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(c) Assignment of loan guarantees

The holder of a loan guarantee made under section 822 of this title may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

(d) Modifications

The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States;

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation; and

(3) the modification cost has been covered under section 822(f) of this title.

(e) Compliance

The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this subchapter, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

(f) Commercial validity

For purposes of claims by any party other than the Secretary, a loan guarantee or loan

guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this subchapter, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(g) Default

The Secretary shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 822 of this title. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that—

(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

(2) if the default has continued for more than 90 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal;

(3) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder's agent, any remaining amounts guaranteed but which were not recovered through the default's resolution;

(4) the Secretary shall not be required to make any payment under paragraphs (1) through (3) if the Secretary finds, before the expiration of the periods described in such paragraphs, that the default has been remedied; and

(5) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount which, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(h) Rights of the Secretary

(1) Subrogation

If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) in connection with a loan guarantee made under section 822 of this title, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

(2) Disposition of property

The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

(i) Action against obligor

The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a di-

rect loan made under section 822 of this title, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 822 of this title. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of—

(1) the amount paid to the holder of a guarantee under subsection (g) of this section; and

(2) any other cost to the United States of remedying the default,

the Secretary shall pay such excess to the obligor.

(j) Breach of conditions

The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity which the Secretary finds is in violation of this subchapter, regulations issued hereunder, or any conditions which were duly agreed to, and to secure any other appropriate relief.

(k) Attachment

No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to such effect in any State, Federal, or other court.

(l) Charges and loan servicing

(1) Purposes

The Secretary may collect from each applicant, obligor, or loan party a reasonable charge for—

(A) the cost of evaluating the application, amendments, modifications, and waivers, including for evaluating project viability, applicant creditworthiness, and the appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings;

(B) the cost of award management and project management oversight;

(C) the cost of services from expert firms, including counsel, and independent financial advisors to assist in the underwriting, auditing, servicing, and exercise of rights with respect to direct loans and loan guarantees; and

(D) the cost of all other expenses incurred as a result of a breach of any term or condition or any event of default on a direct loan or loan guarantee.

(2) Standards

The Secretary may charge different amounts under this subsection based on the different costs incurred under paragraph (1).

(3) Servicer

(A) In general

The Secretary may appoint a financial entity to assist the Secretary in servicing a direct loan or loan guarantee under this subchapter.

(B) Duties

A servicer appointed under subparagraph (A) shall act as the agent of the Secretary in serving a direct loan or loan guarantee under this subchapter.

(C) Fees

A servicer appointed under subparagraph (A) shall receive a servicing fee from the obligor or other loan party, subject to approval by the Secretary.

(4) Safety and operations account

Amounts collected under this subsection shall—

(A) be credited directly to the Safety and Operations account of the Federal Railroad Administration; and

(B) remain available until expended to pay for the costs described in this subsection.

(m) Fees and charges

Except as provided in this subchapter, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 822 of this title.

(Pub. L. 94-210, title V, §503, as added and amended Pub. L. 105-178, title VII, §7203(a)(1), (4), June 9, 1998, 112 Stat. 475, 477; Pub. L. 109-59, title IX, §9003(h), (i), Aug. 10, 2005, 119 Stat. 1923; Pub. L. 114-94, div. A, title XI, §11605(b), Dec. 4, 2015, 129 Stat. 1695.)

CODIFICATION

The text of section 831(c) of this title, which was transferred to subsec. (b) of this section, relating to full faith and credit backing of guarantees entered into by Secretary, by Pub. L. 105-178, title VII, §7203(a)(4), June 9, 1998, 112 Stat. 477, was based on Pub. L. 94-210, title V, §511, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94-555, title II, §215(a), Oct. 19, 1976, 90 Stat. 2625; Pub. L. 105-178, title VII, §7203(a)(2), (3), June 9, 1998, 112 Stat. 477.

PRIOR PROVISIONS

A prior section 823, Pub. L. 94-210, title V, §503, Feb. 5, 1976, 90 Stat. 69; Pub. L. 94-555, title II, §216(b), Oct. 19, 1976, 90 Stat. 2627, related to classification and designation of rail lines, prior to repeal by Pub. L. 105-178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-94, §11605(b)(1), inserted “, including a program guide, a standard term sheet, and specific timetables” before period at end.

Subsecs. (b), (c). Pub. L. 114-94, §11605(b)(3), redesignated subsec. (b), relating to assignment of loan guarantees, as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114-94, §11605(b)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(3). Pub. L. 114-94, §11605(b)(4), added par. (3).

Subsecs. (e) to (k). Pub. L. 114-94, §11605(b)(2), redesignated subsecs. (d) to (j) as (e) to (k), respectively. Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 114-94, §11605(b)(5), added subsec. (l) and struck out former subsec. (l). Prior to amendment, text read as follows: “The Secretary may charge and collect from each applicant a reasonable charge for the cost of evaluating the application, including appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings. Such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation.

Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection.”

Pub. L. 114-94, §11605(b)(2), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 114-94, §11605(b)(2), redesignated subsec. (l) as (m).

2005—Subsec. (k). Pub. L. 109-59, §9003(h), in heading, substituted “Evaluation” for “Investigation” and, in text, inserted “the cost of evaluating the application, including” after “reasonable charge for” and inserted at end “Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection.”

Subsec. (l). Pub. L. 109-59, §9003(i), added subsec. (l). 1998—Subsec. (b). Pub. L. 105-178, §7203(a)(4), redesignated subsec. (c) of section 831 of this title as subsec. (b) of this section, relating to full faith and credit backing of guarantees entered into by Secretary. See Codification note above.

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.

§§ 824, 825. Repealed. Pub. L. 105-178, title VII, § 7203(a)(1), (2), June 9, 1998, 112 Stat. 471, 477

Section 824, Pub. L. 94-210, title V, §504, Feb. 5, 1976, 90 Stat. 70; Pub. L. 94-555, title II, §§216(c), 220(d), Oct. 19, 1976, 90 Stat. 2627, 2629, related to capital needs study to be submitted to Secretary.

Section 825, Pub. L. 94-210, title V, §505, Feb. 5, 1976, 90 Stat. 71; Pub. L. 94-555, title II, §§212, 216(a), Oct. 19, 1976, 90 Stat. 2624, 2626; Pub. L. 95-565, §5, Nov. 1, 1978, 92 Stat. 2400; Pub. L. 95-607, title III, §§301(a), 302, Nov. 8, 1978, 92 Stat. 3066; Pub. L. 95-620, title VIII, §803(c)(5), (6), Nov. 9, 1978, 92 Stat. 3347, 3348; Pub. L. 96-73, title IV, §401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96-101, §§16, 24(a), Nov. 4, 1979, 93 Stat. 744, 747; Pub. L. 96-254, title I, §112, May 30, 1980, 94 Stat. 404; Pub. L. 96-448, title IV, §§404, 405(a)(1), (c)(1), (2), (4), (5), 406, title VII, §701(d), Oct. 14, 1980, 94 Stat. 1945-1947, 1961; Pub. L. 97-35, title XI, §1162(a), (c), (d), Aug. 13, 1981, 95 Stat. 683, 684; Pub. L. 97-468, title IV, §§401, 403(b), Jan. 14, 1983, 96 Stat. 2550, 2551; Pub. L. 99-509, title IV, §4033(c)(3), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 104-88, title III, §330(2), Dec. 29, 1995, 109 Stat. 953, related to rehabilitation and improvement financing.

§ 825a. Repealed. Pub. L. 99-509, title IV, § 4033(c)(6), Oct. 21, 1986, 100 Stat. 1909

Section, Pub. L. 97-468, title IV, §402, Jan. 14, 1983, 96 Stat. 2550, provided for financial assistance to responsible persons for purchase, lease, or rehabilitation of rail lines of Consolidated Rail Corporation.

§§ 826 to 830. Repealed. Pub. L. 105-178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477

Section 826, Pub. L. 94-210, title V, §506, Feb. 5, 1976, 90 Stat. 73; Pub. L. 94-555, title II, §§213, 214, Oct. 19, 1976, 90 Stat. 2624, 2625; Pub. L. 96-448, title IV, §405(c)(3)(A), (C), Oct. 14, 1980, 94 Stat. 1946, 1947, related to redeemable preference shares.

Section 827, Pub. L. 94-210, title V, §507, Feb. 5, 1976, 90 Stat. 74; Pub. L. 95-607, title III, §301(b), Nov. 8, 1978, 92 Stat. 3066; Pub. L. 96-73, title IV, §401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96-448, title IV, §§404, 405(a)(2), (c)(3)(B), Oct. 14, 1980, 94 Stat. 1945, 1946; Pub. L. 97-468, title IV, §401, Jan. 14, 1983, 96 Stat. 2550, related to fund anticipation notes.