

2006—Pub. L. 109-163, §3507(a)(1)(D), which directed the amendment of section 1274(f) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment note for subsecs. (a), (c) and Historical and Revision notes above.

**§ 53714. Guarantee fees**

(a) REGULATIONS.—Subject to this section, the Secretary or Administrator shall prescribe regulations to assess a fee for guaranteeing an obligation under this chapter.

(b) COMPUTATION OF FEE.—

(1) IN GENERAL.—The amount of the fee for a guarantee under this chapter shall be equal to the sum of the amounts determined under paragraph (2) for the years in which the guarantee is in effect.

(2) PRESENT VALUE FOR EACH YEAR.—The amount referred to in paragraph (1) for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3). To determine the present value, the Secretary or Administrator shall apply a discount rate determined by the Secretary of the Treasury, considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) CALCULATION OF AMOUNT.—The amount referred to in paragraph (2) shall be calculated by multiplying—

- (A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, other than interest, on deposit during the year in an escrow fund under section 53715 of this title); by
- (B) the fee rate set under paragraph (4).

(4) SETTING FEE RATES.—To set the fee rate referred to in paragraph (3)(B), the Secretary or Administrator shall establish a formula that—

- (A) takes into account the security provided for the guaranteed obligation; and
- (B) is a sliding scale based on the creditworthiness of the obligor, using—
  - (i) the lowest allowable rate under paragraph (5) for the most creditworthy obligors; and
  - (ii) the highest allowable rate under paragraph (5) for the least creditworthy obligors.

(5) PERMISSIBLE RANGE OF RATES.—The fee rate set under paragraph (4) shall be—

- (A) for a delivered vessel or equipment, at least 0.5 percent and not more than 1 percent; and
- (B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least 0.25 percent and not more than 0.5 percent.

(c) WHEN FEE COLLECTED.—A fee for the guarantee of an obligation under this chapter shall be collected not later than the date on which an amount is first paid on the obligation.

(d) FINANCING THE FEE.—A fee paid under this section is eligible to be financed under this chapter and shall be included in the actual cost of the obligation guaranteed.

(e) NOT REFUNDABLE.—A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the obligation if the obligation is refinanced and guaranteed under this chapter after the refinancing.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1613; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110-181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53714(a) .....	46 App.:1274(e)(1).	June 29, 1936, ch. 858, title XI, §1104A(e) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86-123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86-127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86-685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90-341, June 15, 1968, 82 Stat. 180; Pub. L. 91-469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92-507, §3, Oct. 19, 1972, 86 Stat. 913; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98-595, §1(12), Oct. 30, 1984, 98 Stat. 3131; §1104 renumbered as §1104A, Pub. L. 101-380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 104-239, §13(c), Oct. 8, 1996, 110 Stat. 3136.
53714(b) .....	46 App.:1274(e)(2).	
53714(c) .....	46 App.:1274(e)(3).	
53714(d) .....	46 App.:1274(e)(5).	
53714(e) .....	46 App.:1274(e)(4).	

AMENDMENTS

2008—Pub. L. 110-181, §3522(b), repealed Pub. L. 109-163, §3507(a)(1)(D). See 2006 Amendment note below.

Subsecs. (a), (b)(2), (4). Pub. L. 110-181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(D), into this section by inserting “or Administrator” after “Secretary”, except the second place appearing in subsec. (b)(2). See 2006 Amendment note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-163, §3507(a)(1)(D), which directed the amendment of section 1274(e) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment note for subsecs. (a), (b)(2), (4) and Historical and Revision notes above.

**§ 53715. Escrow fund**

(a) IN GENERAL.—If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as security for a guarantee under this chapter, the Secretary or Administrator may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to—

- (1) the excess of—

(A) the principal amount of all obligations whose proceeds are to be so used; over

(B) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel; plus

(2) any interest the Secretary or Administrator may require on the amount described in paragraph (1).

(b) SECURITY INVOLVING BOTH UNCOMPLETED AND DELIVERED VESSELS.—If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated for purposes of subsection (a) under regulations prescribed by the Secretary or Administrator.

(c) DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.—

(1) PURPOSES.—The Secretary or Administrator shall disburse amounts in the escrow fund, as specified in the escrow agreement, to—

(A) pay amounts the obligor is obligated to pay for—

(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and

(ii) interest on the obligations;

(B) redeem the obligations under a refinancing guaranteed under this chapter; and

(C) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(2) MANNER OF PAYMENT.—If a payment becomes due under the guarantee before the termination of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid into the appropriate account under section 53717 of this title. The amount shall be credited against amounts due or to become due from the obligor to the Secretary or Administrator on the guaranteed obligations or, to the extent not so required, be paid to the obligor.

(d) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—

(1) IN GENERAL.—No disbursement shall be made under subsection (c) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary or Administrator. If the aggregate actual cost of the vessel has increased since the Secretary's or Administrator's initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (c) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, as applicable, of the increase, as determined by the Secretary or Adminis-

trator, in the aggregate actual cost of the vessel. This paragraph does not require the Secretary or Administrator to consent to finance any increase in actual cost unless the Secretary or Administrator determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.—The Secretary or Administrator shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The Secretary or Administrator may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

(e) DISBURSEMENT ON TERMINATION OF AGREEMENT.—

(1) IN GENERAL.—If a payment has not become due under the guarantee before the termination of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to—

(A) prepay the excess of—

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; over

(ii) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) REMAINING BALANCE.—Any remaining balance of the escrow fund shall be paid to the obligor.

(f) INVESTMENT.—The Secretary or Administrator may invest and reinvest any part of an escrow fund in obligations of the United States Government with maturities such that the escrow fund will be available as required for purposes of the escrow agreement. Investment income shall be paid to the obligor when received.

(g) TERMS TO PROTECT GOVERNMENT.—The escrow agreement shall contain other terms the Secretary or Administrator considers necessary to protect fully the interests of the Government.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1614; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110-181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53715(a) .....	46 App.:1279a(a) (less proviso).	June 29, 1936, ch. 858, title XI, §1108, formerly §1111, as added Pub. L. 86-127, §1(2), July 31, 1959, 73 Stat. 272; renumbered Pub. L. 92-507, §5, Oct. 19, 1972, 86 Stat. 916; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108-136, title XXXV, §3521(a), Nov. 24, 2003, 117 Stat. 1799.
53715(b) .....	46 App.:1279a(a) (proviso).	
53715(c) .....	46 App.:1279a(b).	
53715(d) .....	46 App.:1279a(g).	
53715(e) .....	46 App.:1279a(c).	
53715(f) .....	46 App.:1279a(d), (e).	
53715(g) .....	46 App.:1279a(f).	

AMENDMENTS

2008—Pub. L. 110-181, §3522(b), repealed Pub. L. 109-163, §3507(a)(1)(H), (3). See 2006 Amendment note below.

Pub. L. 110-181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(H), (3), into this section by inserting “or Administrator” after “Secretary” wherever appearing and “or Administrator’s” after “Secretary’s” in subsec. (d)(1). See 2006 Amendment note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-163, §3507(a)(1)(H), (3), which directed the amendment of section 1279a of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§ 53716. Deposit fund

(a) IN GENERAL.—There is a deposit fund in the Treasury for purposes of this section. The Secretary or Administrator, in accordance with an agreement under subsection (b), may deposit into and hold in the fund cash belonging to an obligor to serve as collateral for a guarantee made under this chapter with respect to the obligor.

(b) AGREEMENT.—The Secretary or Administrator and an obligor shall make a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the fund. The agreement shall contain—

- (1) terms and conditions required by this section;
- (2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and
- (3) any additional terms considered by the Secretary or Administrator to be necessary to protect fully the interests of the Government.

(c) INVESTMENT.—The Secretary or Administrator may invest and reinvest any part of the amounts in the fund in obligations of the Government with maturities such that amounts in the fund will be available as required for purposes of the agreement under subsection (b). Cash balances in the fund in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

(d) WITHDRAWALS.—

- (1) IN GENERAL.—Cash deposited into the fund may not be withdrawn without the consent of the Secretary or Administrator.

(2) USE OF INCOME.—Subject to paragraph (3), the Secretary or Administrator may pay any income earned on cash of an obligor deposited into the fund in accordance with the agreement with the obligor under subsection (b).

(3) RETENTION AGAINST DEFAULT.—The Secretary or Administrator may retain and offset any or all of the cash of an obligor in the fund, and any income realized thereon, as part of the Secretary’s or Administrator’s recovery against the obligor in case of a default by the obligor on an obligation.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1616; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110-181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53716 .....	46 App.:1279b.	June 29, 1936, ch. 858, title XI, §1109, as added Pub. L. 107-107, title XXXV, §3503, Dec. 28, 2001, 115 Stat. 1392.

In subsection (a), the word “established” is omitted for consistency with other codified titles of the United States Code.

AMENDMENTS

2008—Pub. L. 110-181, §3522(b), repealed Pub. L. 109-163, §3507(a)(1)(H), (3). See 2006 Amendment note below.

Pub. L. 110-181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(H), (3), into this section by inserting “or Administrator” after “Secretary” wherever appearing, except the second place appearing in subsec. (c), and inserting “or Administrator’s” after “Secretary’s” in subsec. (d)(3). See 2006 Amendment note below and section 18(a) of Pub. L. 109-304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109-163, §3507(a)(1)(H), (3), which directed the amendment of section 1279b of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§ 53717. Management of funds in the Treasury

(a) DEFINITION.—In this section, the term “FCRA” means the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) LOAN GUARANTEES BY ADMINISTRATOR.—

(1) WHEN NOT SUBJECT TO FCRA.—The Administrator shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in an account in the Treasury entitled the Federal Ship Financing Fund Liquidating Account (a liquidating account as defined in FCRA).

(2) WHEN SUBJECT TO FCRA.—The Administrator shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury entitled the Federal Ship Financing Guaranteed Loan Financing Account (a financing account as defined in FCRA).