

(c) USED FISHING VESSELS AND FACILITIES.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—

(1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(2) used—

(A) in the harvesting of fish from an underused fishery; or

(B) for a purpose described in the definition of “fishery facility” in section 53701 of this title with respect to an underused fishery.

(d) INDEPENDENT ANALYSIS.—The Secretary or Administrator may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, or financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator.

(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary or Administrator may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, or financial structures.

(Pub. L. 109–304, § 8(c), Oct. 6, 2006, 120 Stat. 1608; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(D), (b)(3)(A), (4), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, § 3522(a)(4), (b), Jan. 28, 2008, 122 Stat. 597, 598.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53708(a)	46 App.:1274(d)(1)(A).	June 29, 1936, ch. 858, title XI, § 1104A(d)(1), (2) [§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. 910; Pub. L. 96–561, title II, § 220(3)(C), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(c), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98–595, § 1(6), Oct. 30, 1984, 98 Stat. 3130; § 1104 renumbered as § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53708(b)	46 App.:1274(d)(1)(B).	June 29, 1936, ch. 858, title XI, § 1104A(f)(2), (3), as added Pub. L. 108–136, title XXXV, § 3526(2)(C), Nov. 24, 2003, 117 Stat. 1801.
53708(c)	46 App.:1274(d)(2).	
53708(d)	46 App.:1274(f)(2).	
53708(e)	46 App.:1274(f)(3).	

AMENDMENTS

2008—Pub. L. 110–181, § 3522(b), repealed Pub. L. 109–163, § 3507(a)(1)(D), (2)(D), (b)(3)(A), (4). See 2006 Amendment note below.

Subsec. (a). Pub. L. 110–181, § 3522(a)(4)(A), (B), incorporated the substance of the amendment by Pub. L. 109–163, § 3507(a)(2)(D), (b)(3)(A), into this section by substituting in the heading, “Administrator” for “Secretary of Transportation” and, in introductory provisions, “Administrator may” for “Secretary of Transportation may”, “Administrator finds” for “Secretary finds”, and “Administrator shall” for “Secretary shall”. 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.

Subsec. (b). Pub. L. 110–181, § 3522(a)(4)(C), (D), struck out “of Commerce” after “Secretary” in heading and the first time appearing in introductory provisions.

Subsec. (c). Pub. L. 110–181, § 3522(a)(4)(D), struck out “of Commerce” after “Secretary”.

Subsec. (d). Pub. L. 110–181, § 3522(a)(4)(E), incorporated the substance of the amendment by Pub. L. 109–163, § 3507(a)(1)(D), (b)(4)(A), (C), into this section by inserting “or Administrator” after “The Secretary” and substituting “or financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator.” for “financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary.” 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.

Subsec. (e). Pub. L. 110–181, § 3522(a)(4)(F), incorporated the substance of the amendment by Pub. L. 109–163, § 3507(a)(1)(D), (b)(4)(B), into this section by inserting “or Administrator” after “chapter, the Secretary” and substituting “or financial structures” for “financial structures, or other risk factors identified by the Secretary”. 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), (2)(D), (b)(3)(A), (4), which directed the amendment of section 1274(d)(1)(A), (f)(2), (3) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110–181, § 3522(b). See 2008 Amendment notes for subsecs. (a), (d), and (e) and Historical and Revision notes above.

§ 53709. Amount of obligations

(a) IN GENERAL.—The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by—

(1) the amount paid by or for the account of the obligor (as determined by the Secretary or Administrator, which determination shall be conclusive) for the construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or

(2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) LIMITATIONS ON AMOUNT BORROWED.—

(1) IN GENERAL.—Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary or Administrator, of the vessel used as security for the guarantee.

(2) CERTAIN APPROVED VESSELS.—The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if—

(A) the size and speed of the vessel are approved by the Secretary or Administrator;

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) BARGES.—For a barge constructed without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(4) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(5) OTEC.—For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(6) ELIGIBLE EXPORT VESSELS.—For an eligible export vessel, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount of an obligation having more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Secretary or Administrator may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1609; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (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)
53709(a)	46 App.:1273(c).	June 29, 1936, ch. 858, title XI, §1103(c), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166.
53709(b)	46 App.:1274(b)(2).	June 29, 1936, ch. 858, title XI, §1104A(b)(2), (last 2 sentences), (c)(1) (last sentence) [§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. 910; Pub. L. 95–257, Apr. 7, 1978, 92 Stat. 194; Pub. L. 96–320, title II, §202(c), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, §220(3)(B), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 99–509, title V, §5003, Oct. 21, 1986, 100 Stat. 1912; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, div. A, title XIII, §1356(3)(B), (C), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104–297, title III, §302(a)(5), Oct. 11, 1996, 110 Stat. 3615.
53709(c)	46 App.:1274(c)(1)	June 29, 1936, ch. 858, title XI, §1104A(1), as added Pub. L. 103–160, div. A, title XIII, §1356(3)(E), Nov. 30, 1993, 107 Stat. 1814.
53709(d)	(last sentence). 46 App.:1274(i).	
53709(e)	46 App.:1274(b) (last 2 sentences).	

Subsections (a) and (d) are substituted for the source provisions for clarity and to eliminate unnecessary words.

REFERENCES IN TEXT

Section 509 of the Merchant Marine Act, 1936, referred to in subsec. (b)(2)(B), is section 509 of act June 29, 1936, ch. 858, 49 Stat. 1985, which is set out as a note under section 53101 of this title.

AMENDMENTS

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

Subsecs. (a)(1), (b)(1), (2)(A), (d). Pub. L. 110-181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109-163, §3507(a)(1)(C), (D), into this section by inserting “or Administrator” after “Secretary”. 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)(C), (D), which directed the amendment of sections 1273(c) and 1274(b)(2), (c)(1), (i) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110-181, §3522(b). See 2008 Amendment note for subsecs. (a)(1), (b)(1), (2)(A), (d) and Historical and Revision notes above.

§ 53710. Contents of obligations

(a) IN GENERAL.—An obligation guaranteed under this chapter must—

(1) provide for payments by the obligor satisfactory to the Secretary or Administrator;

(2) provide for interest (exclusive of guarantee fees and other fees) at a rate not more than the annual rate on the unpaid principal that the Secretary or Administrator determines is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary or Administrator;

(3) have a maturity date satisfactory to the Secretary or Administrator, but—

(A) not more than 25 years after the date of delivery of the vessel used as security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of—

(i) 25 years after the date of delivery of the vessel; or

(ii) the remaining years of useful life of the vessel as determined by the Secretary or Administrator; and

(4) provide, or a related agreement must provide, that if the vessel used as security for the guarantee is a delivered vessel, the vessel shall be—

(A) in class A-1, American Bureau of Shipping, or meet other standards acceptable to the Secretary or Administrator, with all required certificates, including marine inspection certificates of the Coast Guard or, in the case of an eligible export vessel, of the appropriate foreign authorities under a treaty, convention, or other international agreement to which the United States is a party, and with all outstanding requirements and recommendations necessary for class retention accomplished, unless the Secretary or Administrator permits a deferment of repairs necessary to meet these requirements; and

(B) well equipped, in good repair, and in every respect seaworthy and fit for service.

(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

(1) IN GENERAL.—With the Administrator’s approval, if the vessel used as security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in section 503 of the Merchant Marine Act, 1936, an obligation guaranteed under this chapter or a related agreement may provide that—

(A) the only recourse by the United States Government against the obligor for payments under the guarantee will be repossession of the vessel and assignment of insurance claims; and

(B) the obligor’s liability for payments under the guarantee will be satisfied and discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2).

(2) SURRENDER OF VESSEL.—

(A) IN GENERAL.—On surrender, the vessel must be—

(i) free and clear of all liens and encumbrances except the security interest conveyed to the Administrator under this chapter;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) COVERING DEFICIENCIES BY INSURANCE.—To the extent covered by insurance, a deficiency related to a requirement in subparagraph (A) may be satisfied by assignment of the obligor’s insurance claims to the Government.

(c) OTHER PROVISIONS TO PROTECT SECURITY INTERESTS.—An obligation guaranteed under this chapter and any related agreement must contain other provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary or Administrator), liens and releases of liens, payment of taxes, and other matters that the Secretary or Administrator may prescribe.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1610; Pub. L. 109-163, div. C, title XXXV, §3507(a)(1)(D), (2)(C), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110-181, div. C, title XXXV, §3522(a)(5), (9)(A), (10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)