

meeting of the Board to the public, except that meetings shall be closed to the public whenever classified, sensitive security information, or information protected in accordance with section 40119(b),¹ will be discussed.

(Added Pub. L. 107-71, title I, §102(a), Nov. 19, 2001, 115 Stat. 604; amended Pub. L. 107-296, title IV, §426(a), Nov. 25, 2002, 116 Stat. 2186; Pub. L. 111-259, title IV, §411, Oct. 7, 2010, 124 Stat. 2725; Pub. L. 115-254, div. K, title I, §1991(b), Oct. 5, 2018, 132 Stat. 3626.)

REFERENCES IN TEXT

Section 40119 of this title, referred to in subsec. (e), was repealed by Pub. L. 115-254, div. K, title I, §1991(c)(3), Oct. 5, 2018, 132 Stat. 3627.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115-254, §1991(b)(1), substituted “Administrator of the Transportation Security Administration” for “Under Secretary of Transportation for security”.

Subsec. (c)(6). Pub. L. 115-254, §1991(b)(2), substituted “Administrator” for “Under Secretary”.

2010—Subsec. (b)(1)(F). Pub. L. 111-259 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “The Director of the Central Intelligence Agency, or the Director’s designee.”

2002—Subsec. (a). Pub. L. 107-296, §426(a)(1), substituted “Department of Homeland Security” for “Department of Transportation”.

Subsec. (b)(1). Pub. L. 107-296, §426(a)(2), added subpar. (A), redesignated former subpars. (A) to (F) as (B) to (G), respectively, and struck out former subpar. (G) which read as follows: “One member appointed by the President to represent the Office of Homeland Security.”

Subsec. (b)(2). Pub. L. 107-296, §426(a)(3), substituted “Secretary of Homeland Security” for “Secretary of Transportation”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 116. National Surface Transportation and Innovative Finance Bureau

(a) **ESTABLISHMENT.**—The Secretary of Transportation shall establish a National Surface Transportation and Innovative Finance Bureau in the Department.

(b) **PURPOSES.**—The purposes of the Bureau shall be—

(1) to provide assistance and communicate best practices and financing and funding opportunities to eligible entities for the programs referred to in subsection (d)(1);

(2) to administer the application processes for programs within the Department in accordance with subsection (d);

(3) to promote innovative financing best practices in accordance with subsection (e);

(4) to reduce uncertainty and delays with respect to environmental reviews and permitting in accordance with subsection (f); and

(5) to reduce costs and risks to taxpayers in project delivery and procurement in accordance with subsection (g).

(c) **EXECUTIVE DIRECTOR.**—

(1) **APPOINTMENT.**—The Bureau shall be headed by an Executive Director, who shall be appointed in the competitive service by the Secretary, with the approval of the President.

(2) **DUTIES.**—The Executive Director shall—

(A) report to the Under Secretary of Transportation for Policy;

(B) be responsible for the management and oversight of the daily activities, decisions, operations, and personnel of the Bureau;

(C) support the Council on Credit and Finance established under section 117 in accordance with this section; and

(D) carry out such additional duties as the Secretary may prescribe.

(d) **ADMINISTRATION OF CERTAIN APPLICATION PROCESSES.**—

(1) **IN GENERAL.**—The Bureau shall administer the application processes for the following programs:

(A) The infrastructure finance programs authorized under chapter 6 of title 23.

(B) The railroad rehabilitation and improvement financing program authorized under sections 501 through 503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821–823).

(C) Amount allocations authorized under section 142(m) of the Internal Revenue Code of 1986.

(D) The nationally significant freight and highway projects program under section 117 of title 23.

(2) **CONGRESSIONAL NOTIFICATION.**—The Executive Director shall ensure that the congressional notification requirements for each program referred to in paragraph (1) are followed in accordance with the statutory provisions applicable to the program.

(3) **REPORTS.**—The Executive Director shall ensure that the reporting requirements for each program referred to in paragraph (1) are followed in accordance with the statutory provisions applicable to the program.

(4) **COORDINATION.**—In administering the application processes for the programs referred to in paragraph (1), the Executive Director shall coordinate with appropriate officials in the Department and its modal administrations responsible for administering such programs.

(5) **STREAMLINING APPROVAL PROCESSES.**—Not later than 1 year after the date of enactment of this section, the Executive Director shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Environment and Public Works of the Senate a report that—

(A) evaluates the application processes for the programs referred to in paragraph (1);

¹ See References in Text note below.

(B) identifies administrative and legislative actions that would improve the efficiency of the application processes without diminishing Federal oversight; and

(C) describes how the Executive Director will implement administrative actions identified under subparagraph (B) that do not require an Act of Congress.

(6) PROCEDURES AND TRANSPARENCY.—

(A) PROCEDURES.—With respect to the programs referred to in paragraph (1), the Executive Director shall—

(i) establish procedures for analyzing and evaluating applications and for utilizing the recommendations of the Council on Credit and Finance;

(ii) establish procedures for addressing late-arriving applications, as applicable, and communicating the Bureau's decisions for accepting or rejecting late applications to the applicant and the public; and

(iii) document major decisions in the application evaluation process through a decision memorandum or similar mechanism that provides a clear rationale for such decisions.

(B) REVIEW.—

(i) IN GENERAL.—The Comptroller General of the United States shall review the compliance of the Executive Director with the requirements of this paragraph.

(ii) RECOMMENDATIONS.—The Comptroller General may make recommendations to the Executive Director in order to improve compliance with the requirements of this paragraph.

(iii) REPORT.—Not later than 3 years after the date of enactment of this section, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review conducted under clause (i), including findings and recommendations for improvement.

(e) INNOVATIVE FINANCING BEST PRACTICES.—

(1) IN GENERAL.—The Bureau shall work with the modal administrations within the Department, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships.

(2) ACTIVITIES.—The Bureau shall carry out paragraph (1)—

(A) by making Federal credit assistance programs more accessible to eligible recipients;

(B) by providing advice and expertise to eligible entities that seek to leverage public and private funding;

(C) by sharing innovative financing best practices and case studies from eligible entities with other eligible entities that are interested in utilizing innovative financing methods; and

(D) by developing and monitoring—

(i) best practices with respect to standardized State public-private partnership authorities and practices, including best practices related to—

(I) accurate and reliable assumptions for analyzing public-private partnership procurements;

(II) procedures for the handling of unsolicited bids;

(III) policies with respect to noncompete clauses; and

(IV) other significant terms of public-private partnership procurements, as determined appropriate by the Bureau;

(ii) standard contracts for the most common types of public-private partnerships for transportation facilities; and

(iii) analytical tools and other techniques to aid eligible entities in determining the appropriate project delivery model, including a value for money analysis.

(3) TRANSPARENCY.—The Bureau shall—

(A) ensure the transparency of a project receiving credit assistance under a program referred to in subsection (d)(1) and procured as a public-private partnership by—

(i) requiring the sponsor of the project to undergo a value for money analysis or a comparable analysis prior to deciding to advance the project as a public-private partnership;

(ii) requiring the analysis required under subparagraph (A), and other key terms of the relevant public-private partnership agreement, to be made publicly available by the project sponsor at an appropriate time;

(iii) not later than 3 years after the date of completion of the project, requiring the sponsor of the project to conduct a review regarding whether the private partner is meeting the terms of the relevant public-private partnership agreement; and

(iv) providing a publicly available summary of the total level of Federal assistance in such project; and

(B) develop guidance to implement this paragraph that takes into consideration variations in State and local laws and requirements related to public-private partnerships.

(4) SUPPORT TO PROJECT SPONSORS.—At the request of an eligible entity, the Bureau shall provide technical assistance to the eligible entity regarding proposed public-private partnership agreements for transportation facilities, including assistance in performing a value for money analysis or comparable analysis.

(f) ENVIRONMENTAL REVIEW AND PERMITTING.—

(1) IN GENERAL.—The Bureau shall take actions that are appropriate and consistent with the Department's goals and policies to improve the delivery timelines for projects carried out under the programs referred to in subsection (d)(1).

(2) ACTIVITIES.—The Bureau shall carry out paragraph (1)—

(A) by serving as the Department's liaison to the Council on Environmental Quality;

(B) by coordinating efforts to improve the efficiency and effectiveness of the environmental review and permitting process;

(C) by providing technical assistance and training to field and headquarters staff of Federal agencies on policy changes and innovative approaches to the delivery of projects; and

(D) by identifying, developing, and tracking metrics for permit reviews and decisions by Federal agencies for projects under the National Environmental Policy Act of 1969.

(3) SUPPORT TO PROJECT SPONSORS.—At the request of an eligible entity that is carrying out a project under a program referred to in subsection (d)(1), the Bureau, in coordination with the appropriate modal administrations within the Department, shall provide technical assistance with regard to the compliance of the project with the requirements of the National Environmental Policy Act 1969 and relevant Federal environmental permits.

(g) PROJECT PROCUREMENT.—

(1) IN GENERAL.—The Bureau shall promote best practices in procurement for a project receiving assistance under a program referred to in subsection (d)(1) by developing, in coordination with modal administrations within the Department as appropriate, procurement benchmarks in order to ensure accountable expenditure of Federal assistance over the life cycle of the project.

(2) PROCUREMENT BENCHMARKS.—To the maximum extent practicable, the procurement benchmarks developed under paragraph (1) shall—

(A) establish maximum thresholds for acceptable project cost increases and delays in project delivery;

(B) establish uniform methods for States to measure cost and delivery changes over the life cycle of a project; and

(C) be tailored, as necessary, to various types of project procurements, including design-bid-build, design-build, and public-private partnerships.

(3) DATA COLLECTION.—The Bureau shall—

(A) collect information related to procurement benchmarks developed under paragraph (1), including project specific information detailed under paragraph (2); and

(B) provide on a publicly accessible Internet Web site of the Department a report on the information collected under subparagraph (A).

(h) ELIMINATION AND CONSOLIDATION OF DUPLICATIVE OFFICES.—

(1) ELIMINATION OF OFFICES.—The Secretary may eliminate any office within the Department if the Secretary determines that—

(A) the purposes of the office are duplicative of the purposes of the Bureau; and

(B) the elimination of the office does not adversely affect the obligations of the Secretary under any Federal law.

(2) CONSOLIDATION OF OFFICES AND OFFICE FUNCTIONS.—The Secretary may consolidate any office or office function within the Department into the Bureau that the Secretary

determines has duties, responsibilities, resources, or expertise that support the purposes of the Bureau.

(3) STAFFING AND BUDGETARY RESOURCES.—

(A) IN GENERAL.—The Secretary shall ensure that the Bureau is adequately staffed and funded.

(B) STAFFING.—The Secretary may transfer to the Bureau a position within the Department from any office that is eliminated or consolidated under this subsection if the Secretary determines that the position is necessary to carry out the purposes of the Bureau.

(C) SAVINGS PROVISION.—If the Secretary transfers a position to the Bureau under subparagraph (B), the Secretary, in coordination with the appropriate modal administration, shall ensure that the transfer of the position does not adversely affect the obligations of the modal administration under any Federal law.

(D) BUDGETARY RESOURCES.—

(i) TRANSFER OF FUNDS FROM ELIMINATED OR CONSOLIDATED OFFICES.—The Secretary may transfer to the Bureau funds allocated to any office or office function that is eliminated or consolidated under this subsection to carry out the purposes of the Bureau. Any such funds or limitation of obligations or portions thereof transferred to the Bureau may be transferred back to and merged with the original account.

(ii) TRANSFER OF FUNDS ALLOCATED TO ADMINISTRATIVE COSTS.—The Secretary may transfer to the Bureau funds allocated to the administrative costs of processing applications for the programs referred to in subsection (d)(1). Any such funds or limitation of obligations or portions thereof transferred to the Bureau may be transferred back to and merged with the original account.

(4) NOTIFICATION.—Not later than 90 days after the date of enactment of this section, and every 90 days thereafter, the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Commerce, Science, and Transportation of the Senate of—

(A) the offices eliminated under paragraph (1) and the rationale for elimination of the offices;

(B) the offices and office functions consolidated under paragraph (2) and the rationale for consolidation of the offices and office functions;

(C) the actions taken under paragraph (3) and the rationale for taking such actions; and

(D) any additional legislative actions that may be needed.

(i) SAVINGS PROVISIONS.—

(1) LAWS AND REGULATIONS.—Nothing in this section may be construed to change a law or regulation with respect to a program referred to in subsection (d)(1).

(2) **RESPONSIBILITIES.**—Nothing in this section may be construed to abrogate the responsibilities of an agency, operating administration, or office within the Department otherwise charged by a law or regulation with other aspects of program administration, oversight, or project approval or implementation for the programs and projects subject to this section.

(3) **APPLICABILITY.**—Nothing in this section may be construed to affect any pending application under 1 or more of the programs referred to in subsection (d)(1) that was received by the Secretary on or before the date of enactment of this section.

(j) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **BUREAU.**—The term “Bureau” means the National Surface Transportation and Innovative Finance Bureau of the Department.

(2) **DEPARTMENT.**—The term “Department” means the Department of Transportation.

(3) **ELIGIBLE ENTITY.**—The term “eligible entity” means an eligible applicant receiving financial or credit assistance under 1 or more of the programs referred to in subsection (d)(1).

(4) **EXECUTIVE DIRECTOR.**—The term “Executive Director” means the Executive Director of the Bureau.

(5) **MULTIMODAL PROJECT.**—The term “multimodal project” means a project involving the participation of more than 1 modal administration or secretarial office within the Department.

(6) **PROJECT.**—The term “project” means a highway project, public transportation capital project, freight or passenger rail project, or multimodal project.

(Added Pub. L. 114–94, div. A, title IX, §9001(a), Dec. 4, 2015, 129 Stat. 1612; amended Pub. L. 115–56, div. D, §164(a), as added Pub. L. 115–123, div. B, §20101(2), Feb. 9, 2018, 132 Stat. 121.)

REFERENCES IN TEXT

Section 142 of the Internal Revenue Code of 1986, referred to in subsec. (d)(1)(C), is classified to section 142 of Title 26, Internal Revenue Code.

The date of enactment of this section, referred to in subsecs. (d)(5), (6)(B)(iii), (h)(4), and (i)(3), is the date of enactment of Pub. L. 114–94, which was approved Dec. 4, 2015.

The National Environmental Policy Act of 1969, referred to in subsec. (f)(2)(D), (3), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2018—Subsec. (h)(3)(D)(i), (ii). Pub. L. 115–56, §164(a), as added by Pub. L. 115–123, §20101(2), substituted “The” for “During the 2-year period beginning on the date of enactment of this section, the” and inserted at end “Any such funds or limitation of obligations or portions thereof transferred to the Bureau may be transferred back to and merged with the original account.”

EFFECTIVE DATE

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

§ 117. Council on Credit and Finance

(a) **ESTABLISHMENT.**—The Secretary of Transportation shall establish a Council on Credit and Finance in accordance with this section.

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Council shall be composed of the following members:

(A) The Deputy Secretary of Transportation.

(B) The Under Secretary of Transportation for Policy.

(C) The Chief Financial Officer and Assistant Secretary for Budget and Programs.

(D) The General Counsel of the Department of Transportation.

(E) The Assistant Secretary for Transportation Policy.

(F) The Administrator of the Federal Highway Administration.

(G) The Administrator of the Federal Transit Administration.

(H) The Administrator of the Federal Railroad Administration.

(2) **ADDITIONAL MEMBERS.**—The Secretary may designate up to 3 additional officials of the Department to serve as at-large members of the Council.

(3) **CHAIRPERSON AND VICE CHAIRPERSON.**—

(A) **CHAIRPERSON.**—The Deputy Secretary of Transportation shall serve as the chairperson of the Council.

(B) **VICE CHAIRPERSON.**—The Chief Financial Officer and Assistant Secretary for Budget and Programs shall serve as the vice chairperson of the Council.

(4) **EXECUTIVE DIRECTOR.**—The Executive Director of the National Surface Transportation and Innovative Finance Bureau shall serve as a nonvoting member of the Council.

(c) **DUTIES.**—The Council shall—

(1) review applications for assistance submitted under the programs referred to in subparagraphs (A), (B), and (C) of section 116(d)(1);

(2) review applications for assistance submitted under the program referred to in section 116(d)(1)(D), as determined appropriate by the Secretary;

(3) make recommendations to the Secretary regarding the selection of projects to receive assistance under such programs;

(4) review, on a regular basis, projects that received assistance under such programs; and

(5) carry out such additional duties as the Secretary may prescribe.

(Added Pub. L. 114–94, div. A, title IX, §9002(a), Dec. 4, 2015, 129 Stat. 1618.)

EFFECTIVE DATE

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

CHAPTER 3—GENERAL DUTIES AND POWERS

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

Sec.

301. Leadership, consultation, and cooperation.