

“(3) ensure that investment income generated by funds contributed to an account of the bank will be—

“(A) credited to the account;

“(B) available for use in providing loans and other assistance to projects eligible for assistance from the account; and

“(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

“(4) provide that the repayment of a loan or other assistance from an account of the bank under this section shall be consistent with the repayment provisions of [former] section 129(a)(7) of title 23, United States Code, except to the extent the Secretary determines that such provisions are not consistent with this section;

“(5) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

“(6) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

“(7) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan under paragraph (6); and

“(8) require the bank to make an annual report to the Secretary on its status no later than September 30, 1996, and September 30, 1997, and to make such other reports as the Secretary may require by guidelines.

“(f) LIMITATION ON REPAYMENTS.—Notwithstanding any other provision of law, the repayment of a loan or other assistance provided from an infrastructure bank under this section may not be credited towards the non-Federal share of the cost of any project.

“(g) SECRETARIAL REQUIREMENTS.—In administering this section, the Secretary shall—

“(1) ensure that Federal disbursements shall be at a rate consistent with historic rates for the Federal-aid highway program and the Federal transit program, respectively;

“(2) issue guidelines to ensure that all requirements of title 23, United States Code, or title 49, United States Code, that would otherwise apply to funds made available under such title and projects assisted with such funds apply to—

“(A) funds made available under such title and contributed to an infrastructure bank established under this section; and

“(B) projects assisted by the bank through the use of such funds; except to the extent that the Secretary determines that any requirement of such title is not consistent with the objectives of this section; and

“(3) specify procedures and guidelines for establishing, operating, and providing assistance from the bank.

“(h) UNITED STATES NOT OBLIGATED.—The contribution of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

“(i) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31, United States Code, shall not apply to funds contributed under this section.

“(j) PROGRAM ADMINISTRATION.—For each of fiscal years 1996 and 1997, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this sec-

tion to pay the reasonable costs of administering the bank.

“(k) SECRETARIAL REVIEW.—The Secretary shall review the financial condition of each infrastructure bank established under this section and transmit to Congress a report on the results of such review not later than March 1, 1997. In addition, the report shall contain—

“(1) an evaluation of the pilot program conducted under this section and the ability of such program to increase public investment and attract non-Federal capital; and

“(2) recommendations of the Secretary as to whether the program should be expanded or made a part of the Federal-aid highway and transit programs.

“(l) DEFINITIONS.—In this section, the following definitions apply:

“(1) CAPITAL PROJECT.—The term ‘capital project’ has the meaning such term has under section 5302 of title 49, United States Code.

“(2) CONSTRUCTION; FEDERAL-AID HIGHWAY.—The terms ‘construction’ and ‘Federal-aid highway’ have the meanings such terms have under section 101 of title 23, United States Code.

“(3) OTHER ASSISTANCE.—The term ‘other assistance’ includes any use of funds in an infrastructure bank—

“(A) to provide credit enhancements;

“(B) to serve as a capital reserve for bond or debt instrument financing;

“(C) to subsidize interest rates;

“(D) to ensure the issuance of letters of credit and credit instruments;

“(E) to finance purchase and lease agreements with respect to transit projects;

“(F) to provide bond or debt financing instrument security; and

“(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

“(4) STATE.—The term ‘State’ has the meaning such term has under section 101 of title 23, United States Code.”

§ 602. Determination of eligibility and project selection

(a) ELIGIBILITY.—

(1) IN GENERAL.—A project shall be eligible to receive credit assistance under the TIFIA program if—

(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and

(B) the project meets the criteria described in this subsection.

(2) CREDITWORTHINESS.—

(A) IN GENERAL.—To be eligible for assistance under the TIFIA program, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—

(i) a rate covenant, if applicable;

(ii) adequate coverage requirements to ensure repayment;

(iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and

(iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to clause (iii), if the total amount of the senior debt and the Federal credit instrument is less than \$75,000,000, 1 rating agency

opinion for each of the senior debt and Federal credit instrument shall be sufficient.

(B) SENIOR DEBT.—Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating agencies, unless the credit instrument is for an amount less than \$75,000,000, in which case 1 rating agency opinion shall be sufficient.

(3) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—A project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under the TIFIA program.

(4) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application that is acceptable to the Secretary.

(5) ELIGIBLE PROJECT COST PARAMETERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a project under the TIFIA program shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

- (i) \$50,000,000; and
- (ii) 33 $\frac{1}{3}$ percent of the amount of Federal highway funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) EXCEPTIONS.—

(i) INTELLIGENT TRANSPORTATION SYSTEMS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$15,000,000.

(ii) TRANSIT-ORIENTED DEVELOPMENT PROJECTS.—In the case of a project described in section 601(a)(12)(E), eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000.

(iii) RURAL PROJECTS.—In the case of a rural infrastructure project or a project capitalizing a rural projects fund, eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000, but not to exceed \$100,000,000.

(iv) LOCAL INFRASTRUCTURE PROJECTS.—Eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000 in the case of a project or program of projects—

(I) in which the applicant is a local government, public authority, or instrumentality of local government;

(II) located on a facility owned by a local government; or

(III) for which the Secretary determines that a local government is substantially involved in the development of the project.

(6) DEDICATED REVENUE SOURCES.—The applicable Federal credit instrument shall be repayable, in whole or in part, from—

(A) tolls;

(B) user fees;

(C) payments owing to the obligor under a public-private partnership; or

(D) other dedicated revenue sources that also secure or fund the project obligations.

(7) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraph (3).

(8) APPLICATIONS WHERE OBLIGOR WILL BE IDENTIFIED LATER.—A State, local government, agency or instrumentality of a State or local government, or public authority may submit to the Secretary an application under paragraph (4), under which a private party to a public-private partnership will be—

(A) the obligor; and

(B) identified later through completion of a procurement and selection of the private party.

(9) BENEFICIAL EFFECTS.—The Secretary shall determine that financial assistance for the project under the TIFIA program will—

(A) foster, if appropriate, partnerships that attract public and private investment for the project;

(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

(C) reduce the contribution of Federal grant assistance for the project.

(10) PROJECT READINESS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under the TIFIA program, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by no later than 90 days after the date on which a Federal credit instrument is obligated for the project under the TIFIA program.

(B) RURAL PROJECTS FUND.—In the case of a project capitalizing a rural projects fund, the State infrastructure bank shall demonstrate, not later than 2 years after the date on which a secured loan is obligated for the project under the TIFIA program, that the bank has executed a loan agreement with a borrower for a rural infrastructure project in accordance with section 610. After the demonstration is made, the bank may draw upon the secured loan. At the end of the 2-year period, to the extent the bank has not used the loan commitment, the Secretary may extend the term of the loan or withdraw the loan commitment.

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available

to cover the subsidy costs associated with the Federal credit instrument.

(2) MASTER CREDIT AGREEMENTS.—

(A) PROGRAM OF RELATED PROJECTS.—The Secretary may enter into a master credit agreement for a program of related projects secured by a common security pledge on terms acceptable to the Secretary.

(B) ADEQUATE FUNDING NOT AVAILABLE.—If the Secretary fully obligates funding to eligible projects for a fiscal year and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait to execute a credit instrument until the fiscal year for which additional funds are available to receive credit assistance.

(3) PRELIMINARY RATING OPINION LETTER.—The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency—

(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

(B) including a preliminary rating opinion on the Federal credit instrument.

(c) FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under the TIFIA program and projects assisted with those funds:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(2) NEPA.—No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) APPLICATION PROCESSING PROCEDURES.—

(1) NOTICE OF COMPLETE APPLICATION.—Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice to inform the applicant whether—

(A) the application is complete; or

(B) additional information or materials are needed to complete the application.

(2) APPROVAL OR DENIAL OF APPLICATION.—Not later than 60 days after the date of issuance of the written notice under paragraph (1), the Secretary shall provide to the applicant a written notice informing the applicant whether the Secretary has approved or disapproved the application.

(e) DEVELOPMENT PHASE ACTIVITIES.—Any credit instrument secured under the TIFIA pro-

gram may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 243, §182; renumbered §602 and amended Pub. L. 109-59, title I, §§1601(b), (c), 1602(b)(2), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 611; Pub. L. 114-94, div. A, title II, §2001(b), Dec. 4, 2015, 129 Stat. 1440.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(1)(A), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1)(B), (2), 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.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (c)(1)(C), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, and which is classified principally to chapter 61 (§4601 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 4601 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (a)(1), (2)(A), (3). Pub. L. 114-94, §2001(b)(1)(A)–(C), substituted “the TIFIA program” for “this chapter”.

Subsec. (a)(5). Pub. L. 114-94, §2001(b)(1)(D)(i), substituted “ELIGIBLE PROJECT COST PARAMETERS” for “ELIGIBLE PROJECT COSTS” in heading.

Subsec. (a)(5)(A). Pub. L. 114-94, §2001(b)(1)(D)(ii)(I), substituted “subparagraph (B), a project under the TIFIA program” for “subparagraph (B), to be eligible for assistance under this chapter, a project” in introductory provisions.

Subsec. (a)(5)(A)(i). Pub. L. 114-94, §2001(b)(1)(D)(ii)(II), added cl. (i) and struck out former cl. (i) which read as follows:

“(I) \$50,000,000; or

“(II) in the case of a rural infrastructure project, \$25,000,000; and”.

Subsec. (a)(5)(A)(ii). Pub. L. 114-94, §2001(b)(1)(D)(ii)(III), struck out “assistance” after “highway”.

Subsec. (a)(5)(B). Pub. L. 114-94, §2001(b)(1)(D)(iii), substituted “EXCEPTIONS” for “INTELLIGENT TRANSPORTATION SYSTEM PROJECTS” in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cls. (ii) to (iv).

Subsec. (a)(9). Pub. L. 114-94, §2001(b)(1)(E), substituted “the TIFIA program” for “this chapter” in introductory provisions.

Subsec. (a)(10). Pub. L. 114-94, §2001(b)(1)(F), designated existing provisions as subpar. (A), inserted subpar. (A) heading, substituted “Except as provided in subparagraph (B), to be eligible” for “To be eligible”, “the TIFIA program” for “this chapter” in two places, and “no later than” for “not later than”, and added subpar. (B).

Subsec. (b)(2). Pub. L. 114-94, §2001(b)(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of—

“(A) the following fiscal year; and
 “(B) the fiscal year during which additional funds are available to receive credit assistance.”
 Subsecs. (c)(1), (e). Pub. L. 114-94, § 2001(b)(3), (4), substituted “the TIFIA program” for “this chapter”.

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to determination of eligibility and project selection, consisting of subsecs. (a) to (c).

2005—Pub. L. 109-59, § 1602(d), renumbered section 182 of this title as this section.

Subsec. (a). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(1). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter”.

Pub. L. 109-59, § 1601(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “The project—

“(A) shall be included in the State transportation plan required under section 135; and

“(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.”

Subsec. (a)(2). Pub. L. 109-59, § 1601(b)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.”

Subsec. (a)(3)(A). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(3)(A)(i). Pub. L. 109-59, § 1601(b)(2), substituted “\$50,000,000” for “\$100,000,000”.

Subsec. (a)(3)(A)(ii). Pub. L. 109-59, § 1601(b)(3), substituted “33¹/₃” for “50”.

Subsec. (a)(3)(B). Pub. L. 109-59, § 1601(b)(4), substituted “\$15,000,000” for “\$30,000,000”.

Subsec. (a)(4). Pub. L. 109-59, § 1601(b)(5), substituted “The Federal credit instrument” for “Project financing” and inserted “that also secure the project obligations” before period at end.

Subsec. (b)(1). Pub. L. 109-59, § 1601(c)(1), substituted “eligibility requirements” for “eligibility criteria”.

Subsec. (b)(2)(A)(iii), (iv), (vi). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (b)(2)(A)(viii). Pub. L. 109-59, § 1602(b)(2), inserted “and chapter 1” after “this chapter”.

Subsec. (b)(2)(B). Pub. L. 109-59, § 1601(c)(2), inserted “, which may be the Federal credit instrument,” after “obligations”.

Subsec. (c). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

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.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 603. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 602;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;

(C) to refinance existing Federal credit instruments for rural infrastructure projects; or

(D) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

- (i) is selected under section 602; or
- (ii) otherwise meets the requirements of section 602.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B)—

(A) if the maturity of such interim construction financing is later than 1 year after the substantial completion of the project; and

(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

(B) RURAL PROJECTS FUND.—In the case of a project capitalizing a rural projects fund, the maximum amount of a secured loan made to a State infrastructure bank shall be determined in accordance with section 602(a)(5)(B)(iii).

(3) PAYMENT.—A secured loan under this section—

(A) shall—

- (i) be payable, in whole or in part, from—
 - (I) tolls;
 - (II) user fees;
 - (III) payments owing to the obligor under a public-private partnership;
 - (IV) other dedicated revenue sources that also secure the senior project obligations; or

(V) in the case of a secured loan for a project capitalizing a rural projects fund, any other dedicated revenue