

under the authority of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) before the date of enactment of this Act [June 9, 1998] shall be administered until completion under its terms as if this Act [see Tables for classification] were not enacted.”

§ 822. Direct loans and loan guarantees

(a) General authority

The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;
- (2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);
- (3) government sponsored authorities and corporations;
- (4) railroads;
- (5) joint ventures that include at least 1 of the entities described in paragraph (1), (2), (3), (4), or (6); and
- (6) solely for the purpose of constructing a rail connection between a plant or facility and a railroad, limited option freight shippers that own or operate a plant or other facility.

(b) Eligible purposes

(1) In general

Direct loans and loan guarantees under this section shall be used to—

- (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs;
- (B) refinance outstanding debt incurred for the purposes described in subparagraph (A) or (C);
- (C) develop or establish new intermodal or railroad facilities;
- (D) reimburse planning and design expenses relating to activities described in subparagraph (A) or (C); or
- (E) finance economic development, including commercial and residential development, and related infrastructure and activities, that—
 - (i) incorporates private investment;
 - (ii) is physically or functionally related to a passenger rail station or multimodal station that includes rail service;
 - (iii) has a high probability of the applicant commencing the contracting process for construction not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project under this subchapter; and
 - (iv) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs.

(2) Operating expenses not eligible

Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

(3) Sunset

The Secretary may provide a direct loan or loan guarantee under this section for a project described in paragraph (1)(E) until September 30, 2020.

(c) Priority projects

In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

- (1) enhance public safety, including projects for the installation of a positive train control system (as defined in section 20157(i) of title 49);
- (2) promote economic development;
- (3) enhance the environment;
- (4) enable United States companies to be more competitive in international markets;
- (5) are endorsed by the plans prepared under section 135 of title 23 or chapter 227 of title 49 by the State or States in which they are located;
- (6) improve railroad stations and passenger facilities and increase transit-oriented development;
- (7) preserve or enhance rail or intermodal service to small communities or rural areas;
- (8) enhance service and capacity in the national rail system; or
- (9) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

(d) Extent of authority

The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$35,000,000,000 at any one time. Of this amount, not less than \$7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. 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.

(e) Rates of interest

(1) Direct loans

The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

(2) Loan guarantees

The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

(f) Infrastructure partners

(1) Authority of Secretary

In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, including the cost of a modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment

from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority thereof, to fund in whole or in part credit risk premiums and modification costs with respect to the loan that is the subject of the application or modification. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

(2) Credit risk premium amount

The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of—

- (A) the circumstances of the applicant, including the amount of collateral offered, if any;
- (B) the proposed schedule of loan disbursements;
- (C) historical data on the repayment history of similar borrowers;
- (D) consultation with the Congressional Budget Office; and
- (E) any other factors the Secretary considers relevant.

(3) Creditworthiness

An applicant may propose and the Secretary shall accept as a basis for determining the amount of the credit risk premium under paragraph (2) any of the following in addition to the value of any tangible asset:

- (A) The net present value of a future stream of State or local subsidy income or other dedicated revenues to secure the direct loan or loan guarantee.
- (B) Adequate coverage requirements to ensure repayment, on a non-recourse basis, from cash flows generated by the project or any other dedicated revenue source, including—
 - (i) tolls;
 - (ii) user fees; or
 - (iii) payments owing to the obligor under a public-private partnership.
- (C) An investment-grade rating on the direct loan or loan guarantee, as applicable, except that if the total amount of the direct loan or loan guarantee is greater than \$75,000,000, the applicant shall have an investment-grade rating from at least 2 rating agencies on the direct loan or loan guarantee.

(4) Payment of premiums

Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan 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.

(g) Prerequisites for assistance

The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

- (1) repayment of the obligation is required to be made within a term of not more than the lesser of—

- (A) 35 years after the date of substantial completion of the project; or

- (B) the estimated useful life of the rail equipment or facilities to be acquired, rehabilitated, improved, developed, or established;

- (2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

- (3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;

- (4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

- (5) the purposes of the direct loan or loan guarantee are consistent with subsection (b).

(h) Conditions of assistance

(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

- (A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

- (B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

- (C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b).

(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project, if applicable. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

- (A) the standards of section 24312 of title 49, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 836 of this title, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.

(4) The Secretary shall require each recipient of a direct loan or loan guarantee under this section for a project described in subsection (b)(1)(E) to provide a non-Federal match of not less than 25 percent of the total amount expended by the recipient for such project.

(i) Application processing procedures

(1) Application status notices

Not later than 30 days after the date that the Secretary receives an application under this section, or additional information and material under paragraph (2)(B), the Secretary shall provide the applicant written notice as to whether the application is complete or incomplete.

(2) Incomplete applications

If the Secretary determines that an application is incomplete, the Secretary shall—

(A) provide the applicant with a description of all of the specific information or material that is needed to complete the application, including any information required by an independent financial analyst; and

(B) allow the applicant to resubmit the application with the information and material described under subparagraph (A) to complete the application.

(3) Application approvals and disapprovals

(A) In general

Not later than 60 days after the date the Secretary notifies an applicant that an application is complete under paragraph (1), the Secretary shall provide the applicant written notice as to whether the Secretary has approved or disapproved the application.

(B) Actions by the Office of Management and Budget

In order to enable compliance with the time limit under subparagraph (A), the Office of Management and Budget shall take any action required with respect to the application within that 60-day period.

(4) Expedited processing

The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining an approval or a disapproval of an application for a direct loan or loan guarantee under this subchapter.

(5) Dashboard

The Secretary shall post on the Department of Transportation's Internet Web site a monthly report that includes, for each application—

- (A) the applicant type;
- (B) the location of the project;
- (C) a brief description of the project, including its purpose;
- (D) the requested direct loan or loan guarantee amount;
- (E) the date on which the Secretary provided application status notice under paragraph (1); and

(F) the date that the Secretary provided notice of approval or disapproval under paragraph (3).

(j) Repayment schedules

(1) In general

The Secretary shall establish a repayment schedule requiring payments to commence not later than 5 years after the date of substantial completion.

(2) Accrual

Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.

(3) Deferred payments

(A) In general

If at any time after the date of substantial completion the obligor is unable to pay the scheduled loan repayments of principal and interest on a direct loan provided under this section, the Secretary, subject to subparagraph (B), may allow, for a maximum aggregate time of 1 year over the duration of the direct loan, the obligor to add unpaid principal and interest to the outstanding balance of the direct loan.

(B) Interest

A payment deferred under subparagraph (A) shall—

- (i) continue to accrue interest under paragraph (2) until the loan is fully repaid; and
- (ii) be scheduled to be amortized over the remaining term of the loan.

(4) Prepayments

(A) Use of excess revenues

With respect to a direct loan provided by the Secretary under this section, any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and direct loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the direct loan without penalty.

(B) Use of proceeds of refinancing

The direct loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(k) Sale of direct loans

(1) In general

Subject to paragraph (2) and as soon as practicable after substantial completion of a project, the Secretary, after notifying the obligor, may sell to another entity or reoffer into the capital markets a direct loan for the project if the Secretary determines that the sale or reoffering has a high probability of being made on favorable terms.

(2) Consent of obligor

In making a sale or reoffering under paragraph (1), the Secretary may not change the

original terms and conditions of the secured loan without the prior written consent of the obligor.

(l) Nonsubordination

(1) In general

Except as provided in paragraph (2), a direct loan provided by the Secretary under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(2) Preexisting indentures

(A) In general

The Secretary may waive the requirement under paragraph (1) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture if—

(i) the direct loan is rated in the A category or higher;

(ii) the direct loan is secured and payable from pledged revenues not affected by project performance, such as a tax-based revenue pledge or a system-backed pledge of project revenues; and

(iii) the program share, under this subchapter, of eligible project costs is 50 percent or less.

(B) Limitation

The Secretary may impose limitations for the waiver of the nonsubordination requirement under this paragraph if the Secretary determines that such limitations would be in the financial interest of the Federal Government.

(m) Master credit agreements

(1) In general

Subject to subsection (d) and paragraph (2) of this subsection, the Secretary may enter into a master credit agreement that is contingent on all of the conditions for the provision of a direct loan or loan guarantee, as applicable, under this subchapter and other applicable requirements being satisfied prior to the issuance of the direct loan or loan guarantee.

(2) Conditions

Each master credit agreement shall—

(A) establish the maximum amount and general terms and conditions of each applicable direct loan or loan guarantee;

(B) identify 1 or more dedicated non-Federal revenue sources that will secure the repayment of each applicable direct loan or loan guarantee;

(C) provide for the obligation of funds for the direct loans or loan guarantees contingent on and after all requirements have been met for the projects subject to the master credit agreement; and

(D) provide 1 or more dates, as determined by the Secretary, before which the master credit agreement results in each of the direct loans or loan guarantees or in the release of the master credit agreement.

(Pub. L. 94-210, title V, §502, as added Pub. L. 105-178, title VII, §7203(a)(1), June 9, 1998, 112

Stat. 473; amended Pub. L. 109-59, title IX, §9003(b)-(g), Aug. 10, 2005, 119 Stat. 1921-1923; Pub. L. 110-432, div. A, title VII, §701(e), Oct. 16, 2008, 122 Stat. 4906; Pub. L. 114-94, div. A, title XI, §§11603-11605(a), 11606, 11607(a), 11608, 11609, Dec. 4, 2015, 129 Stat. 1694, 1695, 1697-1700; Pub. L. 116-94, div. H, title I, §192, Dec. 20, 2019, 133 Stat. 2972.)

REFERENCES IN TEXT

Section 410(a) of the Amtrak Reform and Accountability Act of 1997, referred to in subsec. (a)(2), is section 410(a) of Pub. L. 105-134, which is set out as a note under section 24101 of Title 49, Transportation.

PRIOR PROVISIONS

A prior section 822, Pub. L. 94-210, title V, §502, Feb. 5, 1976, 90 Stat. 67; Pub. L. 95-620, title VIII, §803(c)(2)-(4), Nov. 9, 1978, 92 Stat. 3347, related to the Rail Fund, prior to repeal by Pub. L. 105-178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2019—Subsec. (b)(3). Pub. L. 116-94 substituted “until September 30, 2020” for “only during the 4-year period beginning on December 4, 2015”.

2015—Subsec. (a)(5). Pub. L. 114-94, §11603(1), substituted “1 of the entities described in paragraph (1), (2), (3), (4), or (6)” for “one railroad”.

Subsec. (a)(6). Pub. L. 114-94, §11603(2), amended par. (6) generally. Prior to amendment, par (6) read as follows: “solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.”

Subsec. (b)(1)(A). Pub. L. 114-94, §11604(a)(1), inserted “, and costs related to these activities, including preconstruction costs” after “shops”.

Subsec. (b)(1)(B). Pub. L. 114-94, §11604(a)(2), substituted “subparagraph (A) or (C);” for “subparagraph (A); or”.

Subsec. (b)(1)(D), (E). Pub. L. 114-94, §11604(a)(3), (4), added subpars. (D) and (E).

Subsec. (b)(3). Pub. L. 114-94, §11604(c), added par. (3).

Subsec. (c)(1). Pub. L. 114-94, §11609(a)(1), inserted “, including projects for the installation of a positive train control system (as defined in section 20157(i) of title 49)” after “public safety”.

Subsec. (c)(2), (3). Pub. L. 114-94, §11609(a)(2), redesignated pars. (2) and (3) as (3) and (2), respectively.

Subsec. (c)(5). Pub. L. 114-94, §11609(a)(3), inserted “or chapter 227 of title 49” after “section 135 of title 23”.

Subsec. (c)(6) to (9). Pub. L. 114-94, §11609(a)(4), (5), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (f)(1). Pub. L. 114-94, §11607(a)(1), substituted “In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, including the cost of a modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority thereof, to fund in whole or in part credit risk premiums and modification costs with respect to the loan that is the subject of the application or modification.” for “In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application.”

Subsec. (f)(2)(D) to (F). Pub. L. 114-94, §11607(a)(2), inserted “and” at end of subpar. (D), redesignated subpar.

(F) as (E), and struck out former subpar. (E) which read as follows: “the size and characteristics of the cohort of which the loan or loan guarantee is a member; and”.

Subsec. (f)(3). Pub. L. 114-94, §11607(a)(5), added par. (3). Former par. (3) redesignated (4).

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.

RETURN OF CREDIT RISK PREMIUMS NOT USED TO MITIGATE LOSSES

Pub. L. 115-265, title II, §212(d), Oct. 11, 2018, 132 Stat. 3749, provided that:

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation, for purposes of section 502(f)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)(4)) (as in effect on the day before the amendments made by section 11607 of Public Law 114-94 (129 Stat. 1698) took effect [Oct. 1, 2015])—

“(A) not later than 30 days after the date of enactment of this Act [Oct. 11, 2018], and in consultation with the Director of the Office of Management and Budget, shall define the term ‘cohorts of loans’;

“(B) before the deadline described in paragraph (2), shall return to the original source, on a pro rata basis, the credit risk premiums paid for the loans in the cohort of loans, with interest accrued thereon, that were not used to mitigate losses; and

“(C) shall not treat the repayment of a loan after the date of enactment of Public Law 114-94 [Dec. 4, 2015] as precluding, limiting, or negatively affecting the satisfaction of the obligation of its cohort prior to the enactment of Public Law 114-94.

“(2) DEADLINE DESCRIBED.—The deadline described in this paragraph is—

“(A) if all obligations attached to a cohort of loans have been satisfied, not later than 60 days after the date of enactment of this Act; and

“(B) if all obligations attached to a cohort of loans have not been satisfied, not later than 60 days after the date on which all obligations attached to the cohort of loans are satisfied.”

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 timetables.

(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