

taining, and repairing the project over the useful life of the project.

(B) Special rule

An eligible project described in section 3905(1) of this title that has not been specifically authorized by Congress shall not be eligible for Federal assistance for operations and maintenance.

(b) Selection criteria

(1) Establishment

The Secretary or the Administrator, as applicable, shall establish criteria for the selection of projects that meet the eligibility requirements of subsection (a), in accordance with paragraph (2).

(2) Criteria

The selection criteria shall include the following:

(A) The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public benefits, such as—

- (i) the reduction of flood risk;
- (ii) the improvement of water quality and quantity, including aquifer recharge;
- (iii) the protection of drinking water, including source water protection; and
- (iv) the support of international commerce.

(B) The extent to which the project financing plan includes public or private financing in addition to assistance under this chapter.

(C) The likelihood that assistance under this chapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(D) The extent to which the project uses new or innovative approaches.

(E) The amount of budget authority required to fund the Federal credit instrument made available under this chapter.

- (F) The extent to which the project—
- (i) protects against extreme weather events, such as floods or hurricanes; or
 - (ii) helps maintain or protect the environment.

(G) The extent to which a project serves regions with significant energy exploration, development, or production areas.

(H) The extent to which a project serves regions with significant water resource challenges, including the need to address—

- (i) water quality concerns in areas of regional, national, or international significance;
- (ii) water quantity concerns related to groundwater, surface water, or other water sources;
- (iii) significant flood risk;
- (iv) water resource challenges identified in existing regional, State, or multistate agreements; or
- (v) water resources with exceptional recreational value or ecological importance.

(I) The extent to which the project addresses identified municipal, State, or regional priorities.

(J) The readiness of the project to proceed toward development, including a demonstration by the obligor that there is a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under this chapter.

(K) The extent to which assistance under this chapter reduces the contribution of Federal assistance to the project.

(3) Special rule for certain combined projects

For a project described in section 3905(9) of this title, the Administrator shall only consider the criteria described in subparagraphs (B) through (K) of paragraph (2).

(c) Federal requirements

Nothing in this section supersedes the applicability of other requirements of Federal law (including regulations).

(Pub. L. 113–121, title V, § 5028, June 10, 2014, 128 Stat. 1335; Pub. L. 114–94, div. A, title I, § 1445, Dec. 4, 2015, 129 Stat. 1437; Pub. L. 114–322, title IV, § 5008(b)(2)(D), Dec. 16, 2016, 130 Stat. 1897; Pub. L. 115–270, title IV, § 4201(a)(2), Oct. 23, 2018, 132 Stat. 3877.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(1)(E). Pub. L. 115–270 amended subpar. (E) generally. Prior to amendment, text read as follows: “The Administrator shall develop a credit evaluation process for a Federal credit instrument provided to a State infrastructure financing authority for a project under section 3905(9) of this title or an entity for a project under section 3905(10) of this title, which may include requiring the provision of a final rating opinion letter from at least 2 rating agencies.”

2016—Subsec. (a)(1)(E). Pub. L. 114–322, § 5008(b)(2)(D)(i), substituted “section 3905(9)” for “section 3905(8)” and “section 3905(10)” for “section 3905(9)”. Subsec. (b)(3). Pub. L. 114–322, § 5008(b)(2)(D)(ii), substituted “section 3905(9)” for “section 3905(8)”.

2015—Subsec. (a)(5) to (7). Pub. L. 114–94 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5). Prior to amendment, text of par. (5) read as follows: “No project receiving Federal credit assistance under this chapter may be financed (directly or indirectly), in whole or in part, with proceeds of any obligation—

“(A) the interest on which is exempt from the tax imposed under chapter 1 of title 26; or

“(B) with respect to which credit is allowable under subpart I or J of part IV of subchapter A of chapter 1 of title 26.”

Statutory Notes and Related Subsidiaries

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.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§ 3908. Secured loans

(a) Agreements

(1) In general

Subject to paragraphs (2) and (3), the Secretary or the Administrator, as applicable,

may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used to finance eligible project costs of any project selected under section 3907 of this title.

(2) Financial risk assessment

Before entering into an agreement under this subsection for a secured loan, the Secretary or the Administrator, as applicable, in consultation with the Director of the Office of Management and Budget and each rating agency providing a rating opinion letter under section 3907(a)(1)(D) of this title, shall determine an appropriate capital reserve subsidy amount for the secured loan, taking into account each such rating opinion letter.

(3) Investment-grade rating requirement

The execution of a secured loan under this section shall be contingent on receipt by the senior obligations of the project of an investment-grade rating.

(b) Terms and limitations

(1) In general

A secured loan provided for a project under this section shall be subject to such terms and conditions, and contain such covenants, representations, warranties, and requirements (including requirements for audits), as the Secretary or the Administrator, as applicable, determines to be appropriate.

(2) Maximum amount

The amount of a secured loan under this section shall not exceed the lesser of—

(A) an amount equal to 49 percent of the reasonably anticipated eligible project costs; and

(B) if the secured loan does not receive an investment-grade rating, the amount of the senior project obligations of the project.

(3) Payment

A secured loan under this section—

(A) shall be payable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the relevant project;

(B) shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(C) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(4) Interest rate

The interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(5) Maturity date

(A) In general

The final maturity date of a secured loan under this section shall be the earlier of—

(i) the date that is 35 years after the date of substantial completion of the relevant project (as determined by the Secretary or the Administrator, as applicable); and

(ii) if the useful life of the project (as determined by the Secretary or Administrator, as applicable) is less than 35 years, the useful life of the project.

(B) Special rule for State infrastructure financing authorities

The final maturity date of a secured loan to a State infrastructure financing authority under this section shall be not later than 35 years after the date on which amounts are first disbursed.

(6) Nonsubordination

A secured loan 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 of the project.

(7) Fees

(A) In general

Except as provided in subparagraph (B), the Secretary or the Administrator, as applicable, may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(B) Financing fees

On request of an eligible entity, the Secretary or the Administrator, as applicable, shall allow the fees under subparagraph (A) to be financed as part of the loan.

(8) Non-Federal share

The proceeds of a secured loan under this section may be used to pay any non-Federal share of project costs required if the loan is repayable from non-Federal funds.

(9) Maximum Federal involvement

(A) In general

Except as provided in subparagraph (B), for each project for which assistance is provided under this chapter, the total amount of Federal assistance shall not exceed 80 percent of the total project cost.

(B) Exceptions

Subparagraph (A) shall not apply to any rural water project—

(i) that is authorized to be carried out by the Secretary of the Interior;

(ii) that includes among its beneficiaries a federally recognized Indian tribe; and

(iii) for which the authorized Federal share of the total project costs is greater than the amount described in subparagraph (A).

(C) Exception for projects funded by a State infrastructure financing authority

Notwithstanding subparagraph (A), a State infrastructure financing authority may finance up to 100 percent of the costs of a project using the proceeds of financial assistance authorized under section 3912(e) of this title, provided that, in the event of a default with respect to any such assistance, the State infrastructure financing authority is solely responsible for immediate repayment of such costs.

(10) Credit

Any eligible project costs incurred and the value of any integral in-kind contributions made before receipt of assistance under this chapter shall be credited toward the 51 percent of project costs to be provided by sources of funding other than a secured loan under this chapter (as described in paragraph (2)(A)).

(c) Repayment**(1) Schedule**

The Secretary or the Administrator, as applicable, shall establish a repayment schedule for each secured loan provided under this section, based on the projected cash flow from project revenues and other repayment sources.

(2) Commencement**(A) In general**

Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project (as determined by the Secretary or Administrator, as applicable).

(B) Special rule for State infrastructure financing authorities**(i) Timing of scheduled loan repayments**

Scheduled loan repayments of principal or interest on a secured loan to a State infrastructure financing authority under this chapter shall commence not later than 5 years after the date on which amounts are first disbursed.

(ii) Repayments

None of the funds for repayment of a secured loan under this title from a State infrastructure financing authority may come from funds provided to a State revolving loan fund under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or section 300j-12 of title 42.

(3) Deferred payments**(A) Authorization**

If, at any time after the date of substantial completion of a project for which a secured loan is provided under this section, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary or the Administrator, as applicable, subject to subparagraph (C), may allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) Interest

Any payment deferred under subparagraph (A) shall—

- (i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and
- (ii) be scheduled to be amortized over the remaining term of the secured loan.

(C) Criteria**(i) In general**

Any payment deferral under subparagraph (A) shall be contingent on the

project meeting such criteria as the Secretary or the Administrator, as applicable, may establish.

(ii) Repayment standards

The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(4) Prepayment**(A) Use of excess revenues**

Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured 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 a secured loan under this section without penalty.

(B) Use of proceeds of refinancing

A secured loan under this section may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) Sale of secured loans**(1) In general**

Subject to paragraph (2), as soon as practicable after the date of substantial completion of a project and after providing a notice to the obligor, the Secretary or the Administrator, as applicable, may sell to another entity or reoffer into the capital markets a secured loan for a project under this section, if the Secretary or the Administrator, as applicable, determines that the sale or reoffering can be made on favorable terms.

(2) Consent of obligor

In making a sale or reoffering under paragraph (1), the Secretary or the Administrator, as applicable, may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) Loan guarantees**(1) In general**

The Secretary or the Administrator, as applicable, may provide a loan guarantee to a lender in lieu of making a secured loan under this section, if the Secretary or the Administrator, as applicable, determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) Terms

The terms of a loan guarantee provided under this subsection shall be consistent with the terms established in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary or the Administrator, as applicable.

(Pub. L. 113-121, title V, § 5029, June 10, 2014, 128 Stat. 1338; Pub. L. 114-322, title IV, § 5008(c), Dec. 16, 2016, 130 Stat. 1897; Pub. L. 115-270, title IV, § 4201(a)(3), (b)(1), Oct. 23, 2018, 132 Stat. 3877, 3878.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in subsec. (c)(2)(B)(ii), is title V of Pub. L. 113-121, June 10, 2014, 128 Stat. 1322. Subtitle C (§§5021-5035) of title V of Pub. L. 113-121 enacted this chapter. For complete classification of title V to the Code, see Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(2)(B)(ii), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816. Title VI of the Act is classified generally to subchapter VI (§1381 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

AMENDMENTS

2018—Subsec. (b)(9)(C). Pub. L. 115-270, §4201(b)(1), added subpar. (C).

Subsec. (c)(2)(B). Pub. L. 115-270, §4201(a)(3), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

2016—Subsec. (b)(7). Pub. L. 114-322, §5008(c)(1), designated existing provisions as subpar. (A), inserted heading, substituted “Except as provided in subparagraph (B), the Secretary” for “The Secretary”, and added subpar. (B).

Subsec. (b)(10). Pub. L. 114-322, §5008(c)(2), added par. (10).

Statutory Notes and Related Subsidiaries

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

§ 3909. Program administration**(a) Requirement**

The Secretary or the Administrator, as applicable, shall establish a uniform system to service the Federal credit instruments made available under this chapter.

(b) Fees**(1) In general**

The Secretary or the Administrator, as applicable, may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover—

(A) the costs of services of expert firms retained pursuant to subsection (d); and

(B) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments provided under this chapter.

(2) Prohibition on pass through fees

The Administrator, in the case where a State infrastructure financing authority obtains financial assistance under section 3912(e) of this title, shall require as a condition of obtaining such assistance, that the State infrastructure financing authority is prohibited from passing any portion of the fees required under section 3908(b)(7) of this title to any party that utilizes any portion of such assistance for a project funded by such authority.

(c) Servicer**(1) In general**

The Secretary or the Administrator, as applicable, may appoint a financial entity to as-

sist the Secretary or the Administrator in servicing the Federal credit instruments provided under this chapter.

(2) Duties

A servicer appointed under paragraph (1) shall act as the agent for the Secretary or the Administrator, as applicable.

(3) Fee

A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary or the Administrator, as applicable.

(d) Assistance from experts

The Secretary or the Administrator, as applicable, may retain the services, including counsel, of organizations and entities with expertise in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments provided under this chapter.

(e) Special rule for State reviews of projects for State infrastructure financing authorities**(1) In general**

A project described in section 3905(9) of this title for which funding is provided under this title shall comply with any applicable State environmental or engineering review requirements pursuant to, as applicable—

(A) title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.); and

(B) section 300j-12 of title 42.

(2) No new reviews required

Nothing in this title requires any additional or new environmental or engineering review for a project described in section 3905(9) of this title for which funding is provided, other than any requirement otherwise applicable to the project.

(f) Special rule for expedited review of applications from State infrastructure financing authorities

Not later than 180 days after the date on which the Administrator receives a complete application from a State infrastructure financing authority for a project under section 3905(9) of this title, the Administrator shall, through a written notice to the State infrastructure financing authority—

(1) approve the application; or

(2) provide detailed guidance and an explanation of any changes to the application necessary for approval of the application.

(g) Agreements**(1) In general**

Subject to paragraphs (3) and (4), the Administrator may enter into an agreement with another relevant Federal agency to provide assistance in administering and servicing Federal credit instruments that such agency is authorized to make available.

(2) Duties

The Administrator may act as an agent for the head of another Federal agency under paragraph (1), subject to the terms of any agreement entered into by the Administrator