

§ 2423. Loan guarantees**(a) Authority**

Subject to the availability of appropriations, the Secretary may make available to lenders for a project meeting the eligibility criteria established in section 2422 of this title loan guarantees to supplement private-sector or lender financing for the project.

(b) Terms and limitations**(1) In general**

Loan guarantees under this section for a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines to be appropriate to protect the financial interests of the United States.

(2) Amount

Loan guarantees by the Secretary shall not exceed an amount equal to 90 percent of the cost of the project that is the subject of the loan guarantee, as estimated at the time at which the loan guarantee is issued.

(3) Interest rate

An obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks.

(4) Amortization

A loan guarantee under this section shall provide for complete amortization of the loan guarantee within not more than 40 years.

(5) Nonsubordination

An obligation shall be subject to the condition that the obligation is not subordinate to other financing.

(c) Prepayment and refinancing

Any prepayment or refinancing terms on a loan guarantee shall be negotiated between the non-Federal borrower and the lender with the consent of the Secretary.

(Pub. L. 109-451, title II, §204, Dec. 22, 2006, 120 Stat. 3358.)

§ 2424. Defaults**(a) Payments by Secretary****(1) In general**

If a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(2) Payment required

By such date as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on, and unpaid principal of, the obligation with respect to which the borrower has defaulted, unless the Secretary finds that there was not default by the borrower in the payment of interest or principal or that the default has been remedied.

(3) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for

the benefit of the non-Federal borrower that may be agreed on by the parties to the obligation and approved by the Secretary.

(b) Subrogation**(1) In general**

If the Secretary makes a payment under subsection (a), the Secretary shall be subrogated to the rights of the recipient of the payment as specified in the loan guarantee or related agreements, including, as appropriate, the authority (notwithstanding any other provision of law) to—

(A) complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to the loan guarantee or related agreements; or

(B) permit the non-Federal borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines the purposes to be in the public interest.

(2) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) Payment of principal and interest by Secretary

With respect to any obligation guaranteed under this section, the Secretary may enter into a contract to pay, and pay, holders of the obligation, for and on behalf of the non-Federal borrower, from funds appropriated for that purpose, the principal and interest payments that become due and payable on the unpaid balance of the obligation if the Secretary finds that—

(1)(A) the non-Federal borrower is unable to meet the payments and is not in default;

(B) it is in the public interest to permit the non-Federal borrower to continue to pursue the purposes of the project; and

(C) the probable net benefit to the Federal Government in paying the principal and interest will be greater than that which would result in the event of a default;

(2) the amount of the payment that the Secretary is authorized to pay shall be no greater than the amount of principal and interest that the non-Federal borrower is obligated to pay under the agreement being guaranteed; and

(3) the borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary.

(d) Action by Attorney General**(1) Notification**

If the non-Federal borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(2) Recovery

On notification, the Attorney General shall take such action as is appropriate to recover the unpaid principal and interest due from—

(A) such assets of the defaulting non-Federal borrower as are associated with the obligation; or

(B) any other security pledged to secure the obligation.

(Pub. L. 109-451, title II, §205, Dec. 22, 2006, 120 Stat. 3358.)

§ 2425. Operations, maintenance, and replacement costs

(a) In general

The non-Federal share of operations, maintenance, and replacement costs for a project receiving Federal assistance under this subchapter shall be 100 percent.

(b) Plan

On request of the non-Federal borrower, the Secretary may assist in the development of an operation, maintenance, and replacement plan to provide the necessary framework to assist the non-Federal borrower in establishing rates and fees for project beneficiaries.

(Pub. L. 109-451, title II, §206, Dec. 22, 2006, 120 Stat. 3360.)

§ 2426. Title to newly constructed facilities

(a) New projects and facilities

All new projects or facilities constructed in accordance with this subchapter shall remain under the jurisdiction and control of the non-Federal borrower subject to the terms of the repayment agreement.

(b) Existing projects and facilities

Nothing in this subchapter affects the title of—

- (1) reclamation projects authorized prior to December 22, 2006;
- (2) works supplemental to existing reclamation projects; or
- (3) works constructed to rehabilitate existing reclamation projects.

(Pub. L. 109-451, title II, §207, Dec. 22, 2006, 120 Stat. 3360.)

§ 2427. Water rights

(a) In general

Nothing in this subchapter preempts or affects State water law or an interstate compact governing water.

(b) Compliance required

The Secretary shall comply with State water laws in carrying out this subchapter. Nothing in this subchapter affects or preempts State water law or an interstate compact governing water.

(Pub. L. 109-451, title II, §208, Dec. 22, 2006, 120 Stat. 3360.)

§ 2428. Interagency coordination and cooperation

(a) Consultation

The Secretary shall consult with the Secretary of Agriculture before promulgating criteria with respect to financial appraisal functions and loan guarantee administration for activities carried out under this subchapter.

(b) Memorandum of agreement

The Secretary and the Secretary of Agriculture shall enter into a memorandum of agree-

ment providing for Department of Agriculture financial appraisal functions and loan guarantee administration for activities carried out under this subchapter.

(Pub. L. 109-451, title II, §209, Dec. 22, 2006, 120 Stat. 3360.)

§ 2429. Records; audits

(a) In general

A recipient of a loan guarantee shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(b) Access

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit, to the records and other pertinent documents.

(Pub. L. 109-451, title II, §210, Dec. 22, 2006, 120 Stat. 3360.)

§ 2430. Full faith and credit

The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(Pub. L. 109-451, title II, §211, Dec. 22, 2006, 120 Stat. 3360.)

§ 2431. Report

Not later than 1 year after the date on which the eligibility criteria are published in the Federal Register under section 2422(a) of this title, and every 2 years thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the implementation of the loan guarantee program under section 2423 of this title.

(Pub. L. 109-451, title II, §212, Dec. 22, 2006, 120 Stat. 3361.)

§ 2432. Effect on the reclamation laws

(a) Reclamation projects

Nothing in this subchapter supersedes or amends any Federal law associated with a project, or a portion of a project, constructed under the reclamation laws.

(b) No new or supplemental benefits

Any assistance provided under this subchapter shall not—

- (1) be considered to be a new or supplemental benefit for purposes of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.); or
- (2) affect any contract in existence on December 22, 2006, that is executed under the reclamation laws.

(Pub. L. 109-451, title II, §213, Dec. 22, 2006, 120 Stat. 3361.)

Editorial Notes

REFERENCES IN TEXT

The Reclamation Reform Act of 1982, referred to in subsec. (b)(1), is title II of Pub. L. 97-293, Oct. 12, 1982,