

(B) with the concurrence of the class II or class III railroad, to a State or local government.

(3) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.

(4) REGULATIONS.—Not later than October 1, 2008, the Secretary shall issue final regulations to implement the program under this section.

(b) MAXIMUM FEDERAL SHARE.—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or supplies. Other in-kind contributions may be approved by the Secretary on a case-by-case basis consistent with this chapter.

(c) USE OF FUNDS.—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall grant funds be contractually obligated for a project later than the end of the third Federal fiscal year following the year in which the grant was awarded. Any funds not so obligated by the end of such fiscal year shall be returned to the Secretary for reallocation.

(d) EMPLOYEE PROTECTION.—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of this chapter.

(e) LABOR STANDARDS.—

(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under subchapter IV of chapter 31 of title 40 (commonly known as the “Davis-Bacon Act”). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the¹ subchapter IV of chapter 31 of title 40.

(f) STUDY.—The Secretary shall conduct a study of the projects carried out with grant assistance under this section to determine the extent to which the program helps promote a reduction in fuel use associated with the transportation of freight and demonstrates innovative technologies that increase fuel economy, reduce

greenhouse gas emissions, and lower the costs of operation. Not later than March 31, 2009, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the study, including any recommendations the Secretary considers appropriate regarding the program.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$50,000,000 for each of fiscal years 2008 through 2011 for carrying out this section.

(Added Pub. L. 110–140, title XI, § 1112(a), Dec. 19, 2007, 121 Stat. 1758; amended Pub. L. 110–432, div. A, title VII, § 701(b), Oct. 16, 2008, 122 Stat. 4906.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in subsec. (d), probably means the date of enactment of Pub. L. 110–140, which amended this chapter generally and was approved Dec. 19, 2007.

The Railway Labor Act, referred to in subsec. (e)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

PRIOR PROVISIONS

A prior section 22301, added Pub. L. 105–178, title VII, § 7202(a), June 9, 1998, 112 Stat. 470, related to grants for light density rail line pilot projects, prior to the general amendment of this chapter by Pub. L. 110–140.

AMENDMENTS

2008—Subsec. (a)(1)(A)(iii). Pub. L. 110–432 substituted “or” for “and”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

CHAPTER 224—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

| Sec. | |
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| 22402. | Direct loans and loan guarantees. |
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§ 22401. Definitions

In this chapter:

(1) COST.—

(A) The term “cost” means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(i) Loan disbursements.

¹ So in original. The word “the” probably should not appear.

(ii) Repayments of principal.

(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

Calculation of the cost of a direct loan shall include the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(i) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments.

(ii) Payments to the Government, including origination and other fees, penalties, and recoveries.

Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

(2) CURRENT.—The term “current” has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(3) DIRECT LOAN.—The term “direct loan” means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims.

(4) DIRECT LOAN OBLIGATION.—The term “direct loan obligation” means a binding agreement by the Secretary to make a direct loan when specified conditions are fulfilled by the borrower.

(5) INTERMODAL.—The term “intermodal” means of or relating to the connection be-

tween rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(6) INVESTMENT-GRADE RATING.—The term “investment-grade rating” means a rating of BBB minus, Baa 3, bbb minus, BBB(low), or higher assigned by a rating agency.

(7) LOAN GUARANTEE.—The term “loan guarantee” means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(8) LOAN GUARANTEE COMMITMENT.—The term “loan guarantee commitment” means a binding agreement by the Secretary to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(9) MASTER CREDIT AGREEMENT.—The term “master credit agreement” means an agreement to make 1 or more direct loans or loan guarantees at future dates for a program of related projects on terms acceptable to the Secretary.

(10) MODIFICATION.—The term “modification” means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

(11) PROJECT OBLIGATION.—The term “project obligation” means a note, bond, debenture, or other debt obligation issued by a borrower in connection with the financing of a project, other than a direct loan or loan guarantee under this chapter.

(12) RAILROAD.—The term “railroad” includes—

(A) any railroad or railroad carrier (as such terms are defined in section 20102); and

(B) any rail carrier (as defined in section 24102).

(13) RATING AGENCY.—The term “rating agency” means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

(14) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(15) SUBSTANTIAL COMPLETION.—The term “substantial completion” means—

(A) the opening of a project to passenger or freight traffic; or

(B) a comparable event, as determined by the Secretary and specified in the terms of

the direct loan or loan guarantee provided by the Secretary.

(Added and amended Pub. L. 117-58, div. B, title I, § 21301(a)(2), (3), (c), Nov. 15, 2021, 135 Stat. 683.)

Editorial Notes

REFERENCES IN TEXT

Section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985, referred to in par. (2), is classified to section 900(c)(9) of Title 2, The Congress.

CODIFICATION

The text of section 821 of Title 45, Railroads, which was transferred to this section and amended by Pub. L. 117-58, div. B, title I, § 21301(a)(3), (c), was based on Pub. L. 94-210, title V, § 501, as added Pub. L. 105-178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471; amended Pub. L. 114-94, div. A, title XI, § 11602, Dec. 4, 2015, 129 Stat. 1693.

AMENDMENTS

2021—Pub. L. 117-58, § 21301(c)(2)(A), substituted “In this chapter:” for “For purposes of this title” in introductory provisions.

Pub. L. 117-58, § 21301(a)(3), transferred text of section 821 of Title 45, Railroads, to this section.

Par. (1). Pub. L. 117-58, § 21301(c)(1)(A), inserted par. heading, designated existing provisions as subpar. (A), and realigned margins of subpars. (B) to (F).

Pars. (2) to (10). Pub. L. 117-58, § 21301(c)(1)(B), inserted headings.

Par. (11). Pub. L. 117-58, § 21301(c)(1)(B), (2)(B), inserted heading and substituted “under this chapter” for “under this title”.

Par. (12). Pub. L. 117-58, § 21301(c)(2)(C), amended par. (12) generally. Prior to amendment, text read as follows: “The term ‘railroad’ has the meaning given the term ‘railroad carrier’ in section 20102 of title 49, United States Code.”

Pub. L. 117-58, § 21301(c)(1)(B), inserted heading.

Par. (13). Pub. L. 117-58, § 21301(c)(1)(B), inserted heading.

Par. (14). Pub. L. 117-58, § 21301(c)(2)(E), added par. (14). Former par. (14) redesignated (15).

Pub. L. 117-58, § 21301(c)(1)(B), inserted heading.

Par. (15). Pub. L. 117-58, § 21301(c)(2)(D), redesignated par. (14) as (15).

Statutory Notes and Related Subsidiaries

SAVINGS PROVISION

Pub. L. 114-94, div. A, title XI, § 11607(b), Dec. 4, 2015, 129 Stat. 1699, as amended by Pub. L. 117-58, div. B, title I, § 21301(j)(3)(B)(i), Nov. 15, 2021, 135 Stat. 692, provided that: “All provisions under section[s] 22402 through 22404 of title 49, United States Code [see former 45 U.S.C. 822, 823, 836], as they existed on the day before enactment of this Act shall apply to direct loans provided by the Secretary [of Transportation] prior to the date of enactment of this Act [Dec. 4, 2015], and nothing in this title [see Tables for classification] may be construed to limit the payback of a credit risk premium, with interest accrued thereon, if a direct loan provided by the Secretary under such sections has been paid back in full, prior to the date of enactment of this Act.”

Pub. L. 114-94, div. A, title XI, § 11610, Dec. 4, 2015, 129 Stat. 1700, as amended by Pub. L. 117-58, div. B, title I, § 21301(j)(3)(B)(ii), Nov. 15, 2021, 135 Stat. 692, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b) and section 11607(b) [set out above], this subtitle [see Short Title of 2015 Amendment note set out under section 801 of Title 45, Railroads], and the amendments made by this subtitle, shall not affect any direct loan (or direct loan obligation) or an outstanding loan guar-

antee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act [Dec. 4, 2015]. Any such transaction entered into before the date of enactment of this Act shall be administered until completion under its terms as if this Act [div. A of Pub. L. 114-94, see Tables for classification] were not enacted.

“(b) MODIFICATION COSTS.—At the discretion of the Secretary [of Transportation], the authority to accept modification costs on behalf of an applicant under section 22402(f) of title 49, United States Code, may apply with respect to any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act.”

Pub. L. 105-178, title VII, § 7203(b)(2), June 9, 1998, 112 Stat. 477, as amended by Pub. L. 117-58, div. B, title I, § 21301(j)(3)(C), Nov. 15, 2021, 135 Stat. 692, provided that: “A transaction entered into under the authority of chapter 224 of title 49, United States Code, 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.”

§ 22402. Direct loans and loan guarantees

(a) GENERAL AUTHORITY.—The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;
- (2) entities implementing 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) entities participating in joint ventures that include at least 1 of the entities described in paragraph (1), (2), (3), (4), or (6);
- (6) limited option freight shippers that own or operate a plant or other facility, solely for the purpose of constructing a rail connection between a plant or facility and a railroad; and
- (7) private entities with controlling ownership in 1 or more freight railroads other than Class I carriers.

(b) ELIGIBLE PURPOSES.—

(1) IN GENERAL.—Direct loans and loan guarantees authorized under this section shall be used—

(A) to acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, cuts and fills, stations, tunnels, bridges, yards, buildings, and shops, and to finance costs related to those activities, including pre-construction costs;

(B) to develop or establish new intermodal or railroad facilities;

(C) to develop landside port infrastructure for seaports serviced by rail;

(D) to refinance outstanding debt incurred for the purposes described in subparagraph (A), (B), or (C);

(E) to reimburse planning, permitting, and design expenses relating to activities described in subparagraph (A), (B), or (C); or

(F) to finance economic development, including commercial and residential development, and related infrastructure and activities, that—

- (i) incorporates private investment of greater than 20 percent of total project costs;