

Subsec. (f)(3)(B)(ii). Pub. L. 117–58, § 21301(d)(5)(A)(ii), inserted “, including operating or tenant charges, facility rents, or other fees paid by transportation service providers or operators for access to, or the use of, infrastructure, including rail lines, bridges, tunnels, yards, or stations” after “user fees”.

Subsec. (f)(3)(C). Pub. L. 117–58, § 21301(d)(5)(A)(iii), substituted “\$150,000,000” for “\$75,000,000”.

Subsec. (f)(3)(D). Pub. L. 117–58, § 21301(d)(5)(A)(iv), added subpar. (D).

Subsec. (f)(5) to (7). Pub. L. 117–58, § 21301(d)(5)(B), added pars. (5) to (7).

Subsec. (g)(1). Pub. L. 117–58, § 21301(d)(6), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “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;”.

Subsec. (h)(3)(A). Pub. L. 117–58, § 21301(d)(7)(A)(i), substituted “Amtrak” for “the National Railroad Passenger Corporation” and struck out “of title 49, United States Code” after “section 24312” and “of that title” after “section 24308(a)”.

Subsec. (h)(3)(B). Pub. L. 117–58, § 21301(d)(7)(A)(ii), substituted “section 22404” for “section 504 of this Act”.

Subsec. (h)(4). Pub. L. 117–58, § 21301(d)(7)(B), substituted “(b)(1)(F)” for “(b)(1)(E)”.

Subsec. (i)(4). Pub. L. 117–58, § 21301(d)(8)(A), amended par. (4) generally. Prior to amendment, text read as follows: “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 title.”

Subsec. (i)(5)(G). Pub. L. 117–58, § 21301(d)(8)(B), added subpar. (G).

Subsec. (i)(6). Pub. L. 117–58, § 21301(d)(8)(C), added par. (6).

Subsec. (l)(2)(A)(iii). Pub. L. 117–58, § 21301(d)(9), substituted “under this chapter” for “under this title”.

Subsec. (m)(1). Pub. L. 117–58, § 21301(d)(10), substituted “under this chapter” for “under this title”.

Subsec. (n). Pub. L. 117–58, § 21301(d)(11), added subsec. (n).

Statutory Notes and Related Subsidiaries

SUBSTANTIVE CRITERIA AND STANDARDS

Pub. L. 117–58, div. B, title I, § 21302, Nov. 15, 2021, 135 Stat. 693, provided that: “Not later than 180 days after the date of enactment of this Act [Nov. 15, 2021], the Secretary [of Transportation] shall update the publicly available credit program guide in accordance with the provisions of chapter 224 of title 49, United States Code, as added by section 21301 [of div. B of Pub. L. 117–58].”

SEMIANNUAL REPORT ON TRANSIT-ORIENTED DEVELOPMENT ELIGIBILITY

Pub. L. 117–58, div. B, title I, § 21303, Nov. 15, 2021, 135 Stat. 693, provided that: “Not later than 6 months after the date of enactment of this Act [Nov. 15, 2021], and every 6 months thereafter, the Secretary [of Transportation] shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that identifies—

“(1) the number of applications submitted to the Department [of Transportation] for a direct loan or loan guarantee under section 22402(b)(1)(E) of title 49, United States Code, as amended by section 21301 [of div. B of Pub. L. 117–58];

“(2) the number of such loans or loan guarantees that were provided to the applicants; and

“(3) for each such application, the reasons for providing or declining to provide the requested loan or loan guarantee.”

RETURN OF CREDIT RISK PREMIUMS NOT USED TO MITIGATE LOSSES

Pub. L. 115–265, title II, § 212(d), Oct. 11, 2018, 132 Stat. 3749, as amended by Pub. L. 117–58, div. B, title I, § 21301(j)(3)(D), Nov. 15, 2021, 135 Stat. 692, provided that:

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation, for purposes of section 22402 of title 49, United States Code [see former 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.”

§ 22403. Administration of direct loans and loan guarantees

(a) APPLICATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe the form and contents required of applications for assistance under section 22402, 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.

(2) DOCUMENTATION.—An applicant meeting the size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) may provide unaudited financial statements as documentation of historical financial information if such statements are accompanied by the applicant’s Federal tax returns and Internal Revenue Service tax verifications for the corresponding years.

(b) FULL FAITH AND CREDIT.—All guarantees entered into by the Secretary under section 22402 shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(c) ASSIGNMENT OF LOAN GUARANTEES.—The holder of a loan guarantee made under section 22402 may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

(d) MODIFICATIONS.—The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States;

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation; and

(3) the modification cost has been covered under section 22402(f).

(e) COMPLIANCE.—The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this chapter, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

(f) COMMERCIAL VALIDITY.—For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this chapter, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(g) DEFAULT.—The Secretary shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 22402. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that—

(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

(2) if the default has continued for more than 90 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal;

(3) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder's agent, any remaining amounts guaranteed but which were not recovered through the default's resolution;

(4) the Secretary shall not be required to make any payment under paragraphs (1) through (3) if the Secretary finds, before the expiration of the periods described in such paragraphs, that the default has been remedied; and

(5) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount which, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(h) RIGHTS OF THE SECRETARY.—

(1) SUBROGATION.—If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) in connection with a loan guarantee made under section 22402, the Sec-

retary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

(2) DISPOSITION OF PROPERTY.—The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

(i) ACTION AGAINST OBLIGOR.—The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 22402, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 22402. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of—

(1) the amount paid to the holder of a guarantee under subsection (g) of this section; and

(2) any other cost to the United States of remedying the default,

the Secretary shall pay such excess to the obligor.

(j) BREACH OF CONDITIONS.—The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity which the Secretary finds is in violation of this chapter, regulations issued hereunder, or any conditions which were duly agreed to, and to secure any other appropriate relief.

(k) ATTACHMENT.—No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to such effect in any State, Federal, or other court.

(l) CHARGES AND LOAN SERVICING.—

(1) PURPOSES.—The Secretary may collect from each applicant, obligor, or loan party a reasonable charge for—

(A) the cost of evaluating the application, amendments, modifications, and waivers, including for evaluating project viability, applicant creditworthiness, and the appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings;

(B) the cost of award management and project management oversight;

(C) the cost of services from expert firms, including counsel, and independent financial advisors to assist in the underwriting, auditing, servicing, and exercise of rights with respect to direct loans and loan guarantees; and

(D) the cost of all other expenses incurred as a result of a breach of any term or condition or any event of default on a direct loan or loan guarantee.

(2) STANDARDS.—The Secretary may charge different amounts under this subsection based

on the different costs incurred under paragraph (1).

(3) **SERVICER.**—

(A) **IN GENERAL.**—The Secretary may appoint a financial entity to assist the Secretary in servicing a direct loan or loan guarantee under this chapter.

(B) **DUTIES.**—A servicer appointed under subparagraph (A) shall act as the agent of the Secretary in servicing a direct loan or loan guarantee under this chapter.

(C) **FEES.**—A servicer appointed under subparagraph (A) shall receive a servicing fee from the obligor or other loan party, subject to approval by the Secretary.

(4) **NATIONAL SURFACE TRANSPORTATION AND INNOVATIVE FINANCE BUREAU ACCOUNT.**—Amounts collected under this subsection shall—

(A) be credited directly to the National Surface Transportation and Innovative Finance Bureau account; and

(B) remain available until expended to pay for the costs described in this subsection.

(m) **FEES AND CHARGES.**—Except as provided in this chapter, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 22402.

(Added and amended Pub. L. 117–58, div. B, title I, § 21301(a)(2), (5), (e), Nov. 15, 2021, 135 Stat. 683, 689.)

Editorial Notes

CODIFICATION

The text of section 823 of Title 45, Railroads, which was transferred to this section and amended by Pub. L. 117–58, div. B, title I, § 21301(a)(5), (e), was based on Pub. L. 94–210, title V, § 503, as added and amended Pub. L. 105–178, title VII, § 7203(a)(1), (4), June 9, 1998, 112 Stat. 475, 477; Pub. L. 109–59, title IX, § 9003(h), (i), Aug. 10, 2005, 119 Stat. 1923; Pub. L. 114–94, div. A, title XI, § 11605(b), Dec. 4, 2015, 129 Stat. 1695; Pub. L. 115–56, div. D, § 164(b), as added Pub. L. 115–123, div. B, § 20101(2), Feb. 9, 2018, 132 Stat. 121.

AMENDMENTS

2021—Pub. L. 117–58, § 21301(a)(5), transferred text of section 823 of Title 45, Railroads, to this section.

Subsec. (a). Pub. L. 117–58, § 21301(e)(1), designated existing provisions as par. (1), inserted heading, substituted “section 22402” for “section 502”, and added par. (2).

Subsecs. (b), (c). Pub. L. 117–58, § 21301(e)(4)(A), substituted “section 22402” for “section 502”.

Subsec. (d)(3). Pub. L. 117–58, § 21301(e)(2), substituted “section 22402(f)” for “section 502(f)”.

Subsecs. (e), (f). Pub. L. 117–58, § 21301(e)(4)(B), substituted “this chapter” for “this title”.

Subsecs. (g), (h)(1). Pub. L. 117–58, § 21301(e)(4)(A), substituted “section 22402” for “section 502”.

Subsec. (i). Pub. L. 117–58, § 21301(e)(4)(A), substituted “section 22402” for “section 502” in two places in introductory provisions.

Subsec. (j). Pub. L. 117–58, § 21301(e)(4)(B), substituted “this chapter” for “this title”.

Subsec. (l)(3)(A). Pub. L. 117–58, § 21301(e)(4)(B), substituted “this chapter” for “this title”.

Subsec. (l)(3)(B). Pub. L. 117–58, § 21301(e)(4)(B), substituted “this chapter” for “this title”.

Pub. L. 117–58, § 21301(e)(3), substituted “servicing a direct loan” for “serving a direct loan”.

Subsec. (m). Pub. L. 117–58, § 21301(e)(4), substituted “section 22402” for “section 502” and “this chapter” for “this title”.

§ 22404. Employee protection

(a) **GENERAL.**—Fair and equitable arrangements shall be provided, in accordance with this section, to protect the interests of any employees who may be affected by actions taken pursuant to authorizations or approval obtained under this chapter. Such arrangements shall be determined by the execution of an agreement between the representatives of the railroads and the representatives of their employees, not later than 120 days after February 5, 1976. In the absence of such an executed agreement, the Secretary of Labor shall prescribe the applicable protective arrangements, not later than 150 days after February 5, 1976.

(b) **TERMS.**—The arrangements required by subsection (a) of this section shall apply to each employee who has an employment relationship with a railroad on the date on which such railroad first applies for applicable financial assistance under this chapter. Such arrangements shall include such provisions as may be necessary for the negotiation and execution of agreements as to the manner in which the protective arrangements shall be applied, including notice requirements. Such agreements shall be executed prior to implementation of work funded from financial assistance under this chapter. If such an agreement is not reached within 30 days after the date on which an application for such assistance is approved, either party to the dispute may submit the issue for final and binding arbitration. The decision on any such arbitration shall be rendered within 30 days after such submission. Such arbitration decision shall in no way modify the protection afforded in the protective arrangements established pursuant to this section, shall be final and binding on the parties thereto, and shall become a part of the agreement. Such arrangements shall also include such provisions as may be necessary—

(1) for the preservation of compensation (including subsequent general wage increases, vacation allowances, and monthly compensation guarantees), rights, privileges, and benefits (including fringe benefits such as pensions, hospitalization, and vacations, under the same conditions and so long as such benefits continue to be accorded to other employees of the employing railroad in active service or on furlough, as the case may be) to such employees under existing collective-bargaining agreements or otherwise;

(2) to provide for final and binding arbitration of any dispute which cannot be settled by the parties, with respect to the interpretation, application, or enforcement of the provisions of the protective arrangements;

(3) to provide that an employee who is unable to secure employment by the exercise of his or her seniority rights, as a result of actions taken with financial assistance obtained under this chapter, shall be offered reassignment and, where necessary, retraining to fill a position comparable to the position held at the time of such adverse effect and for which he is, or by training and retraining can become, physically and mentally qualified, so long as such offer is not in contravention of collective bargaining agreements relating thereto; and