

45 USC § 822



United States Code
45 U.S.C. § 822
§ 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);
- (3) government sponsored authorities and corporations;
- (4) railroads;
- (5) joint ventures that include at least one railroad; and
- (6) 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.

(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;
- (B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or
- (C) develop or establish new intermodal or railroad facilities.

(2) Operating expenses not eligible

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

(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;

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

- (1) enhance public safety;
- (2) enhance the environment;

- (3) promote economic development;
- (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 , by the State or States in which they are located;
- (6) preserve or enhance rail or intermodal service to small communities or rural areas;
- (7) enhance service and capacity in the national rail system; or
- (8) 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) Rate 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 , 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. 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;
- (E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and
- (F) any other factors the Secretary considers relevant.

(3) Payment of premiums

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

(4) Cohorts of loans

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.

(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 25 years from the date of its execution;
- (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) of this section.

(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) of this section.

(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. 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 Title 49 ; 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.

(i) Time limit for approval or disapproval--

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. <>

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