

33 USC Ch. 52: WATER INFRASTRUCTURE FINANCE AND INNOVATION

From Title 33—NAVIGATION AND NAVIGABLE WATERS

CHAPTER 52—WATER INFRASTRUCTURE FINANCE AND INNOVATION

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§3901. Definitions

In this chapter:

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Community water system

The term "community water system" has the meaning given the term in section 300f of title 42.

(3) Federal credit instrument

The term "Federal credit instrument" means a secured loan or loan guarantee authorized to be made available under this chapter with respect to a project.

(4) Investment-grade rating

The term "investment-grade rating" means a rating of BBB minus, Baa3, bbb minus, BBB (low), or higher assigned by a rating agency to project obligations.

(5) Lender

(A) In general

The term "lender" means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or a successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)).

(B) Inclusions

The term "lender" includes—

- (i) a qualified retirement plan (as defined in section 4974(c) of title 26) that is a qualified institutional buyer; and
- (ii) a governmental plan (as defined in section 414(d) of title 26) that is a qualified institutional buyer.

(6) Loan guarantee

The term "loan guarantee" means any guarantee or other pledge by the Secretary or the Administrator to pay all or part of the principal of, and interest on, a loan or other debt obligation issued by an obligor and funded by a lender.

(7) Obligor

The term "obligor" means an eligible entity that is primarily liable for payment of the principal of, or interest on, a Federal credit instrument.

(8) Project obligation

(A) In general

The term "project obligation" means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project.

(B) Exclusion

The term "project obligation" does not include a Federal credit instrument.

(9) 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 78c(a) of title 15).

(10) Secured loan

The term "secured loan" means a direct loan or other debt obligation issued by an obligor and funded by the Secretary or Administrator, as applicable, in connection with the financing of a project under section 3908 of this title.

(11) State

The term "State" means—

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(12) State infrastructure financing authority

The term "State infrastructure financing authority" means the State entity established or designated by the Governor of a State to receive a capitalization grant provided by, or otherwise carry out the requirements of, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et. ¹ seq.) or section 300j–12 of title 42.

(13) Subsidy amount

The term "subsidy amount" means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, as calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(14) Substantial completion

The term "substantial completion", with respect to a project, means the earliest date on which a project is considered to perform the functions for which the project is designed.

(15) Treatment works

The term "treatment works" has the meaning given the term in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292).

(Pub. L. 113–121, title V, §5022, June 10, 2014, 128 Stat. 1332.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (5)(A), is title I of act [May 27, 1933, ch. 38](#), 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Federal Water Pollution Control Act, referred to in par. (12), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, [Oct. 18, 1972](#), 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of this title. 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.

The Federal Credit Reform Act of 1990, referred to in par. (13), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, [title XIII, §13201\(a\), Nov. 5, 1990](#), 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 113–121, [title V, §5021, June 10, 2014](#), 128 Stat. 1332, provided that: "This subtitle [subtitle C (§§5021–5035) of title V of Pub. L. 113–121, enacting this chapter] may be cited as the 'Water Infrastructure Finance and Innovation Act of 2014'."

"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.

¹ So in original. The period probably should not appear.

§3902. Authority to provide assistance

(a) In general

The Secretary and the Administrator may provide financial assistance under this chapter to carry out projects, which shall be selected to ensure a diversity of project types and geographical locations.

(b) Responsibility

(1) Secretary

The Secretary shall provide financial assistance to carry out all projects under this chapter that are eligible projects under section 3905(1) of this title.

(2) Administrator

The Administrator shall provide financial assistance to carry out all projects under this chapter that are eligible projects under paragraphs (2), (3), (4), (5), (6), (7), and (9) of section 3905 of this title.

(3) Other projects

The Secretary or the Administrator, as applicable, may carry out eligible projects under paragraph (8) or (10) of section 3905 of this title.

(Pub. L. 113–121, title V, §5023, June 10, 2014, 128 Stat. 1333; Pub. L. 114–322, title IV, §5008(a), (b) (2)(A), Dec. 16, 2016, 130 Stat. 1896, 1897; Pub. L. 115–270, title IV, §4201(a)(1), Oct. 23, 2018, 132 Stat. 3877.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–270, §4201(a)(1)(A), struck out "pilot" before "projects".

Subsec. (b)(1). Pub. L. 115–270, §4201(a)(1), substituted "provide financial assistance to carry out all projects" for "carry out all pilot projects".

Subsec. (b)(2). Pub. L. 115–270, §4201(a)(1)(A), struck out "pilot" after "all".

2016—Subsec. (b)(2). Pub. L. 114–322, §5008(b)(2)(A)(i), substituted "(7), and (9)" for "and (8)".

Pub. L. 114–322, §5008(a), substituted "provide financial assistance to carry out" for "carry out".

Subsec. (b)(3). Pub. L. 114–322, §5008(b)(2)(A)(ii), substituted "paragraph (8) or (10)" for "paragraph (7) or (9)".

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.

§3903. Applications

(a) In general

To receive assistance under this chapter, an eligible entity shall submit to the Secretary or the Administrator, as applicable, an application at such time, in such manner, and containing such information as the Secretary or the Administrator may require.

(b) Combined projects

In the case of an eligible project described in paragraph (9) or (10) of section 3905 of this title, the Secretary or the Administrator, as applicable, shall require the eligible entity to submit a single application for the combined group of projects.

(Pub. L. 113–121, title V, §5024, June 10, 2014, 128 Stat. 1333; Pub. L. 114–322, title IV, §5008(b)(2) (B), Dec. 16, 2016, 130 Stat. 1897.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (b). Pub. L. 114–322 substituted "paragraph (9) or (10)" for "paragraph (8) or (9)".

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.

§3904. Eligible entities

The following entities are eligible to receive assistance under this chapter:

- (1) A corporation.
- (2) A partnership.
- (3) A joint venture.
- (4) A trust.
- (5) A Federal, State, or local governmental entity, agency, or instrumentality.
- (6) A tribal government or consortium of tribal governments.
- (7) A State infrastructure financing authority.

(Pub. L. 113–121, title V, §5025, June 10, 2014, 128 Stat. 1334.)

§3905. Projects eligible for assistance

The following projects may be carried out with amounts made available under this chapter:

(1) Any project for flood damage reduction, hurricane and storm damage reduction, environmental restoration, coastal or inland harbor navigation improvement, or inland and intracoastal waterways navigation improvement that the Secretary determines is technically sound, economically justified, and environmentally acceptable, including—

- (A) a project to reduce flood damage;
- (B) a project to restore aquatic ecosystems;
- (C) a project to improve the inland and intracoastal waterways navigation system of the United States; and
- (D) a project to improve navigation of a coastal or inland harbor of the United States, including channel deepening and construction of associated general navigation features.

(2) 1 or more activities that are eligible for assistance under section 1383(c) of this title, notwithstanding the public ownership requirement under paragraph (1) of that subsection.

(3) 1 or more activities described in section 300j–12(a)(2) of title 42.

(4) A project for enhanced energy efficiency in the operation of a public water system or a publicly owned treatment works.

(5) A project for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or waste collection facility (including a facility that serves a population or community of an Indian reservation).

(6) A brackish or sea water desalination project, including chloride control, a managed aquifer recharge project, a water recycling project, or a project to provide alternative water supplies to reduce aquifer depletion.

(7) A project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds.

(8) Acquisition of real property or an interest in real property—

- (A) if the acquisition is integral to a project described in paragraphs (1) through (6); or

(B) pursuant to an existing plan that, in the judgment of the Administrator or the Secretary, as applicable, would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for assistance under this section.

(9) A combination of projects, each of which is eligible under paragraph (2) or (3), for which a State infrastructure financing authority submits to the Administrator a single application.

(10) A combination of projects secured by a common security pledge, each of which is eligible under paragraph (1), (2), (3), (4), (5), (6), (7), or (8), for which an eligible entity, or a combination of eligible entities, submits a single application.

(Pub. L. 113–121, title V, §5026, June 10, 2014, 128 Stat. 1334; Pub. L. 114–322, title IV, §5008(b)(1), Dec. 16, 2016, 130 Stat. 1896.)

EDITORIAL NOTES

AMENDMENTS

2016—Par. (6). Pub. L. 114–322, §5008(b)(1)(A), substituted "desalination project, including chloride control" for "desalination project" and "a water recycling project, or a project to provide alternative water supplies to reduce aquifer depletion" for "or a water recycling project".

Pars. (7) to (9). Pub. L. 114–322, §5008(b)(1)(B), (C), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively. Former par. (9) redesignated (10).

Par. (10). Pub. L. 114–322, §5008(b)(1)(B), (D), redesignated par. (9) as (10) and substituted "(7), or (8)" for "or (7)".

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.

§3906. Activities eligible for assistance

For purposes of this chapter, an eligible activity with respect to an eligible project includes the cost of

(1) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(2) construction, reconstruction, rehabilitation, and replacement activities;

(3) the acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation (including acquisitions pursuant to section 3905(8) of this title), construction contingencies, and acquisition of equipment; and

(4) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(Pub. L. 113–121, title V, §5027, June 10, 2014, 128 Stat. 1335; Pub. L. 114–322, title IV, §5008(b)(2) (C), Dec. 16, 2016, 130 Stat. 1897.)

EDITORIAL NOTES

AMENDMENTS

2016—Par. (3). Pub. L. 114–322 substituted "section 3905(8)" for "section 3905(7)".

§3907. Determination of eligibility and project selection

(a) Eligibility requirements

To be eligible to receive financial assistance under this chapter, a project shall meet the following criteria, as determined by the Secretary or Administrator, as applicable:

(1) Creditworthiness

(A) In general

The project and obligor shall be creditworthy, which shall be determined by the Secretary or the Administrator, as applicable.

(B) Considerations

In determining the creditworthiness of a project and obligor, the Secretary or the Administrator, as applicable, shall take into consideration relevant factors, including—

- (i) the terms, conditions, financial structure, and security features of the proposed financing;
- (ii) the dedicated revenue sources that will secure or fund the project obligations;
- (iii) the financial assumptions upon which the project is based; and
- (iv) the financial soundness and credit history of the obligor.

(C) Security features

The Secretary or the Administrator, as applicable, shall ensure that any financing for the project has appropriate security features, such as a rate covenant, supporting the project obligations to ensure repayment.

(D) Rating opinion letters

(i) Preliminary rating opinion letter

The Secretary or the Administrator, as applicable, shall require each project applicant to provide, at the time of application, a preliminary rating opinion letter from at least 1 rating agency indicating that the senior obligations of the project (which may be the Federal credit instrument) have the potential to achieve an investment-grade rating.

(ii) Final rating opinion letters

The Secretary or the Administrator, as applicable, shall require each project applicant to provide, prior to final acceptance and financing of the project, a final rating opinion letter from at least 1 rating agency indicating that the senior obligations of the project have an investment-grade rating.

(E) Special rule for certain combined projects

The Administrator shall develop a credit evaluation process for a Federal credit instrument provided to—

- (i) a State infrastructure financing authority for a project under section 3905(9) of this title, which may include requiring the provision of a final rating opinion letter from at least one rating agency; or
- (ii) 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 two rating agencies.

(2) Eligible project costs

(A) In general

Subject to subparagraph (B), the eligible project costs of a project shall be reasonably anticipated to be not less than \$20,000,000.

(B) Small community water infrastructure projects

For a project described in paragraph (2) or (3) of section 3905 of this title that serves a community of not more than 25,000 individuals, the eligible project costs of a project shall be reasonably anticipated to be not less than \$5,000,000.

(3) Dedicated revenue sources

The Federal credit instrument for the project shall be repayable, in whole or in part, from dedicated revenue sources that also secure the project obligations.

(4) Public sponsorship of private entities

(A) In general

If an eligible project is carried out by an entity that is not a State or local government or an agency or instrumentality of a State or local government or a tribal government or consortium of tribal governments, the project shall be publicly sponsored.

(B) Public sponsorship

For purposes of this chapter, a project shall be considered to be publicly sponsored if the obligor can demonstrate, to the satisfaction of the Secretary or the Administrator, as appropriate, that the project applicant has consulted with the affected State, local, or tribal government in which the project is located, or is otherwise affected by the project, and that such government supports the proposed project.

(5) Use of existing financing mechanisms

(A) Notification

For each eligible project for which the Administrator has authority under paragraph (2) or (3) of section 3902(b) of this title and for which the Administrator has received an application for financial assistance under this chapter, the Administrator shall notify, not later than 30 days after the date on which the Administrator receives a complete application, the applicable State infrastructure financing authority of the State in which the project is located that such application has been submitted.

(B) Determination

If, not later than 60 days after the date of receipt of a notification under subparagraph (A), a State infrastructure financing authority notifies the Administrator that the State infrastructure financing authority intends to commit funds to the project in an amount that is equal to or greater than the amount requested under the application, the Administrator may not provide any financial assistance for that project under this chapter unless—

- (i) by the date that is 180 days after the date of receipt of a notification under subparagraph (A), the State infrastructure financing authority fails to enter into an assistance agreement to provide funds for the project; or
- (ii) the financial assistance to be provided by the State infrastructure financing authority will be at rates and terms that are less favorable than the rates and terms for financial assistance provided under this chapter.

(6) Operation and maintenance plan

(A) In general

The Secretary or the Administrator, as applicable, shall determine whether an applicant for assistance under this chapter has developed, and identified adequate revenues to implement, a plan for operating, maintaining, 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; Pub. L. 117–58, div. E, title II, §50214, Nov. 15, 2021, 135 Stat. 1173.)

EDITORIAL NOTES

AMENDMENTS

2021—Subsec. (a)(1)(D)(ii). Pub. L. 117–58 substituted "a final rating opinion letter from at least 1 rating agency" for "final rating opinion letters from at least 2 rating agencies".

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 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 assist 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 and the head of such other agency under such clause.

(3) Transfer of funds

The authority of the Administrator to provide assistance under paragraph (1) is subject to—

- (A) the availability of funds appropriated to the other Federal agency that may be transferred to the Administrator to carry out an agreement entered into under paragraph (1); and
- (B) the transfer of such funds to the Administrator to carry out such an agreement.

(4) Limitation

Nothing in this subsection affects the authority of the Administrator with respect to the selection of projects described in paragraphs (1), (8), or (10) of section 3905 of this title to receive financial assistance under this chapter.

(h) Applicability of other laws

Section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) applies to the construction of a project carried out, in whole or in part, with assistance made available through a Federal credit instrument under this chapter in the same manner that section applies to a treatment works for which a grant is made available under that Act [33 U.S.C. 1251 et seq.].

(Pub. L. 113–121, [title V, §5030, June 10, 2014](#), 128 Stat. 1341; Pub. L. 115–270, [title IV, §4201\(b\)\(2\), \(c\), Oct. 23, 2018](#), 132 Stat. 3878, 3880.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsecs. (e)(1)(A) and (h), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of this title. 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.

Under this title and nothing in this title, referred to in subsec. (e), mean 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.

AMENDMENTS

- 2018**—Subsec. (b)(2). Pub. L. 115–270, §4201(b)(2)(A), added par. (2).
Subsecs. (e), (f). Pub. L. 115–270, §4201(b)(2)(B), added subsecs. (e) and (f). Former subsec. (e) designated (h).
Subsec. (g). Pub. L. 115–270, §4201(c), added subsec. (g).
Subsec. (h). Pub. L. 115–270, §4201(b)(2)(B), redesignated subsec. (e) as (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

AGREEMENT WITH COMMISSIONER OF RECLAMATION

Pub. L. 115–270, title IV, §4301, Oct. 23, 2018, 132 Stat. 3880, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 23, 2018], the Administrator of the Environmental Protection Agency and the Commissioner of Reclamation shall enter into an agreement under section 5030(g) of the Water Infrastructure Finance and Innovation Act [33 U.S.C. 3909(g)] (as added by this Act)."

"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.

§3910. State, tribal, and local permits

The provision of financial assistance for a project under this chapter shall not—

- (1) relieve any recipient of the assistance of any obligation to obtain any required State, local, or tribal permit or approval with respect to the project;
- (2) limit the right of any unit of State, local, or tribal government to approve or regulate any rate of return on private equity invested in the project; or
- (3) otherwise supersede any State, local, or tribal law (including any regulation) applicable to the construction or operation of the project.

(Pub. L. 113–121, title V, §5031, June 10, 2014, 128 Stat. 1342.)

§3911. Regulations

The Secretary or the Administrator, as applicable, may promulgate such regulations as the Secretary or Administrator determines to be appropriate to carry out this chapter.

(Pub. L. 113–121, title V, §5032, June 10, 2014, 128 Stat. 1342.)

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.

§3912. Funding

(a) In general

(1) Fiscal years 2015 through 2019

There are authorized to be appropriated to each of the Secretary and the Administrator to carry out this chapter, to remain available until expended—

- (A) \$20,000,000 for fiscal year 2015;
- (B) \$25,000,000 for fiscal year 2016;
- (C) \$35,000,000 for fiscal year 2017;
- (D) \$45,000,000 for fiscal year 2018; and
- (E) \$50,000,000 for fiscal year 2019.

(2) Fiscal years 2020 and 2021

There is authorized to be appropriated to the Administrator to carry out this chapter \$50,000,000 for each of fiscal years 2020 and 2021, to remain available until expended.

(3) Fiscal years 2022 through 2026

There is authorized to be appropriated to the Administrator to carry out this chapter \$50,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

(b) Administrative costs

(1) Fiscal years 2015 through 2019

Of the funds made available to carry out this chapter, the Secretary or the Administrator, as applicable, may use for the administration of this chapter, including for the provision of technical assistance to aid project sponsors in obtaining the necessary approvals for the project, not more than \$2,200,000 for each of fiscal years 2015 through 2019.

(2) Fiscal years after 2019

Of the funds made available to carry out this chapter, the Administrator may use for the administration of this chapter, including for the provision of technical assistance to aid project sponsors in obtaining the necessary approvals for the project, not more than \$5,000,000 for each of fiscal years 2022 through 2026.

(c) Small community water infrastructure projects

(1) In general

For each fiscal year, the Secretary or the Administrator, as applicable, shall set aside not less than 15 percent of the amounts made available for that fiscal year under this section for small community water infrastructure projects described in section 3907(a)(2)(B) of this title.

(2) Administration

Any amounts set aside under paragraph (1) that remain unobligated on June 1 of the fiscal year for which the amounts are set aside shall be available for obligation by the Secretary or the Administrator, as applicable, for projects other than small community water infrastructure projects.

(d) Additional funding

Notwithstanding section 3908(b)(2) of this title, the Secretary or the Administrator, as applicable, may make available up to 25 percent of the amounts made available for each fiscal year under this section for loans in excess of 49 percent of the total project costs.

(e) Assistance for State infrastructure financing authorities

(1) In general

With respect to fiscal years 2022 through 2026, if the Administrator has available for obligation in a fiscal year at least \$50,000,000, there is authorized to be appropriated to the Administrator

\$5,000,000 for that fiscal year to provide financial assistance for projects described in section 3905(9) of this title to State infrastructure financing authorities.

(2) No impact on other Federal funding

No funds shall be made available in a fiscal year to the Administrator for purposes of this subsection if—

(A) the total amount appropriated for the fiscal year for State loan funds under section 300j–12 of title 42 is less than either the amount made available for such purpose in fiscal year 2018, or 105 percent of the previous fiscal year's appropriation for such purpose, whichever is greater; and

(B) the total amount appropriated for the fiscal year for water pollution control revolving funds under title VI of the Federal Water Pollution Control Act [33 U.S.C. 1381 et seq.] is less than either the amount made available for such purpose for fiscal year 2018, or 105 percent of the previous fiscal year's appropriation for such purpose, whichever is greater.

(3) Inclusion in agreement

If the Administrator provides financial assistance to a State infrastructure financing authority under section 3908 of this title using funds made available pursuant to this subsection, the Administrator shall specify in the agreement under such section the amount of such assistance that is attributable to such funds.

(Pub. L. 113–121, title V, §5033, June 10, 2014, 128 Stat. 1342; Pub. L. 115–270, title IV, §4201(a)(4), (b)(3), Oct. 23, 2018, 132 Stat. 3878, 3879; Pub. L. 117–58, div. E, title II, §50215(a), Nov. 15, 2021, 135 Stat. 1174.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec (e)(2)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of this title. 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

2021—Subsec. (a)(3). Pub. L. 117–58, §50215(a)(1), added par. (3).

Subsec. (b)(2). Pub. L. 117–58, §50215(a)(2), substituted "after 2019" for "2020 and 2021" in heading and "2022 through 2026" for "2020 and 2021" in text.

Subsec. (e)(1). Pub. L. 117–58, §50215(a)(3), substituted "2022 through 2026" for "2020 and 2021".

2018—Subsec. (a). Pub. L. 115–270, §4201(a)(4)(A), designated existing provisions as par. (1) and inserted heading, substituted "There are" for "There is", redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), realigned margins, and added par. (2).

Subsec. (b). Pub. L. 115–270, §4201(a)(4)(B), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e). Pub. L. 115–270, §4201(b)(3), added subsec. (e).

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.

§3913. Reports on program implementation

(a) Agency reporting

As soon as practicable after each fiscal year for which amounts are made available to carry out this chapter, the Secretary and the Administrator shall publish on a dedicated, publicly accessible Internet site—

- (1) each application received for assistance under this chapter; and
- (2) a list of the projects selected for assistance under this chapter, including—
 - (A) a description of each project;
 - (B) the amount of financial assistance provided for each project; and
 - (C) the basis for the selection of each project with respect to the requirements of this chapter.

(b) Reports to Congress

(1) In general

Not later than 3 years after October 23, 2018, the Comptroller General of the United States shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report summarizing for the projects that are receiving, or have received, assistance under this chapter—

- (A) the applications received for assistance under this chapter;
- (B) the projects selected for assistance under this chapter, including a description of the projects and the basis for the selection of those projects with respect to the requirements of this chapter;
- (C) the type and amount of financial assistance provided for each project selected for assistance under this chapter;
- (D) the financial performance of each project selected for assistance under this chapter, including an evaluation of whether the objectives of this chapter are being met;
- (E) the benefits and impacts of implementation of this chapter, including the public benefit provided by the projects selected for assistance under this chapter, including, as applicable, water quality and water quantity improvement, the protection of drinking water, and the reduction of flood risk; and
- (F) an evaluation of the feasibility of attracting non-Federal public or private financing for water infrastructure projects as a result of the implementation of this chapter.

(2) Recommendations

The report under paragraph (1) shall include—

- (A) an evaluation of the impacts (if any) of the limitation under section 3907(a)(5) ¹ of this title on the ability of eligible entities to finance water infrastructure projects under this chapter;
- (B) a recommendation as to whether the objectives of this chapter would be best served—
 - (i) by continuing the authority of the Secretary or the Administrator, as applicable, to provide assistance under this chapter;
 - (ii) by establishing a Government corporation or Government-sponsored enterprise to provide assistance in accordance with this chapter; or
 - (iii) by terminating the authority of the Secretary and the Administrator under this chapter and relying on the capital markets to fund the types of infrastructure investments assisted by this chapter without Federal participation; and
- (C) any proposed changes to improve the efficiency and effectiveness of this chapter in providing financing for water infrastructure projects, taking into consideration the recommendations made under subparagraphs (A) and (B).

(Pub. L. 113–121, title V, §5034, June 10, 2014, 128 Stat. 1343; Pub. L. 115–270, title IV, §4201(d), Oct. 23, 2018, 132 Stat. 3880.)

REFERENCES IN TEXT

Section 3907(a)(5) of this title, referred to in subsec. (b)(2)(A), was struck out, and section 3907(a)(6) of this title was redesignated as 3907(a)(5), by Pub. L. 114–94, [div. A, title I, §1445, Dec. 4, 2015](#), 129 Stat. 1437. As amended, section 3907(a)(5) no longer relates to limitation.

AMENDMENTS

2018—Pub. L. 115–270, §4201(d)(1), struck out "pilot" before "program" in section catchline.

Subsec. (b)(1). Pub. L. 115–270, §4201(d)(2), substituted "3 years after October 23, 2018" for "4 years after June 10, 2014" in introductory provisions.

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.

¹ See References in Text note below.

§3914. Requirements

(a) In general

Except as provided in subsection (c), none of the amounts made available under this chapter may be used for the construction, alteration, maintenance, or repair of a project eligible for assistance under this chapter unless all of the iron and steel products used in the project are produced in the United States.

(b) Definition of iron and steel products

In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(c) Application

Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that

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- (1) applying subsection (a) would be inconsistent with the public interest;
 - (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(d) Waiver

If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(e) International agreements

This section shall be applied in a manner consistent with United States obligations under international agreements.

(Pub. L. 113–121, title V, §5035, June 10, 2014, 128 Stat. 1344.)

§3915. Outreach plan

(a) Definition of rural community

In this section, the term "rural community" means a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants.

(b) Outreach required

Not later than 180 days after November 15, 2021, the Administrator, in consultation with relevant Federal agencies, shall develop and begin implementation of an outreach plan to promote financial assistance available under this subtitle to small communities and rural communities.

(Pub. L. 113–121, title V, §5036, as added Pub. L. 117–58, div. E, title II, §50215(b), Nov. 15, 2021, 135 Stat. 1174.)