

46 USC Ch. 537: LOANS AND GUARANTEES

From Title 46—SHIPPING

Subtitle V—Merchant Marine

Part C—Financial Assistance Programs

CHAPTER 537—LOANS AND GUARANTEES

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EDITORIAL NOTES

AMENDMENTS

2023—Pub. L. 118–31, div. C, title XXXV, §3514(g), Dec. 22, 2023, 137 Stat. 811, added item 53703 and struck out former item 53703 "Application procedures".

2019—Pub. L. 116–92, div. C, title XXXV, §3506(l), Dec. 20, 2019, 133 Stat. 1974, added item 53719 and struck out item 53732 "Eligible export vessels".

2008—Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(A), Jan. 28, 2008, 122 Stat. 598, inserted "or Administrator" after "Secretary" in items 53722 and 53723.

SUBCHAPTER I—GENERAL

§53701. Definitions

In this chapter:

- (1) **ACTUAL COST.**—The term "actual cost" means the sum of—
 - (A) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 53715(d)(1) of this title; and
 - (B) all amounts that the Secretary or Administrator reasonably estimates the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 53714 of this title in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.
- (2) **ADMINISTRATOR.**—The term "Administrator" means the Administrator of the Maritime Administration.
- (3) **CONSTRUCTION, RECONSTRUCTION, AND RECONDITIONING.**—The terms "construction", "reconstruction", and "reconditioning" include designing, inspecting, outfitting, and equipping.
- (4) **DEPRECIATED ACTUAL COST.**—The term "depreciated actual cost" of a vessel means—
 - (A) if the vessel was not reconstructed or reconditioned, the actual cost of the vessel depreciated on a straight line basis over the useful life of the vessel as determined by the Secretary or Administrator, not to exceed 25 years from the date of delivery by the builder; or
 - (B) if the vessel was reconstructed or reconditioned, the sum of—
 - (i) the actual cost of the vessel depreciated on a straight line basis from the date of delivery by the builder to the date of the reconstruction or reconditioning, using the original useful life of the vessel, and from the date of the reconstruction or reconditioning, using a useful life of the vessel determined by the Secretary or Administrator; and
 - (ii) any amount paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straight line basis using a useful life of the vessel determined by the Secretary or Administrator.
- (5) **FISHERY FACILITY.**—
 - (A) **IN GENERAL.**—Subject to subparagraph (B), the term "fishery facility" means—

- (i) for operations on land—
 - (I) a structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from a fishery;
 - (II) the land necessary for the structure or appurtenance; and
 - (III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I);
- (ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, the processing of fish; or
- (iii) for aquaculture, including operations on land or elsewhere—
 - (I) a structure or appurtenance thereto designed for aquaculture;
 - (II) the land necessary for the structure or appurtenance;
 - (III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I); and
 - (IV) a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) **REQUIRED OWNERSHIP.**—Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel must be owned by—

- (i) an individual who is a citizen of the United States; or
- (ii) an entity that is a citizen of the United States under section 50501 of this title and that is at least 75 percent owned (as determined under that section) by citizens of the United States.

(6) **FISHING VESSEL.**—The term "fishing vessel" has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), and any reference in this chapter to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

(7) **HISTORICAL USES.**—The term "historical uses" includes—

- (A) refurbishing, repairing, rebuilding, or replacing equipment on a fishing vessel, without materially increasing harvesting capacity;
- (B) purchasing a used fishing vessel;
- (C) purchasing, constructing, expanding, or reconditioning a fishery facility;
- (D) refinancing existing debt;
- (E) reducing fishing capacity; and
- (F) making upgrades to a fishing vessel, including upgrades in technology, gear, or equipment, that improve—
 - (i) collection and reporting of fishery-dependent data;
 - (ii) bycatch reduction or avoidance;
 - (iii) gear selectivity;
 - (iv) adverse impacts caused by fishing gear; or
 - (v) safety.

(8) **MORTGAGE.**—The term "mortgage" includes—

- (A) a preferred mortgage as defined in section 31301 of this title; and
- (B) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of this title.

(9) **OBLIGATION.**—The term "obligation" means an instrument of indebtedness issued for a purpose described in section 53706 of this title, except—

- (A) an obligation issued by the Secretary or Administrator under section 53723 of this title; and
- (B) an obligation eligible for investment of funds under section 53715(f) or 53717 of this title.

(10) **OBLIGEE.**—The term "obligee" means the holder of an obligation.

(11) **OBLIGOR.**—The term "obligor" means a party primarily liable for payment of the principal of or interest on an obligation.

(12) **OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP.**—The term "ocean thermal energy conversion facility or plantship" means an at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, that uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes—

- (A) equipment installed on the facility or vessel to use the electricity or other form of energy to produce, process, refine, or manufacture a product;
- (B) a cable or pipeline used to deliver the electricity, freshwater, or product to shore; and
- (C) other associated equipment and appurtenances of the facility or vessel to the extent they are located seaward of the high water mark.

(13) **SECRETARY.**—The term "Secretary" means the Secretary of Commerce with respect to fishing vessels and fishery facilities.

(14) **VESSEL.**—The term "vessel" means any type of vessel, whether in existence or under construction, including—

- (A) a cargo vessel;
- (B) a passenger vessel;
- (C) a combination cargo and passenger vessel;
- (D) a tanker;
- (E) a tug or towboat;
- (F) a barge;
- (G) a dredge;
- (H) a floating drydock with a capacity of at least 35,000 lifting tons and a beam of at least 125 feet between the wing walls;
- (I) an oceanographic research vessel;
- (J) an instruction vessel;
- (K) a pollution treatment, abatement, or control vessel;
- (L) a fishing vessel whose ownership meets the citizenship requirements under section 50501 of this title for documenting vessels to operate in the coastwise trade; and
- (M) an ocean thermal energy conversion facility or plantship that is or will be documented under the laws of the United States.

(15) **VESSEL OF NATIONAL INTEREST.**—The term "Vessel of National Interest" means a vessel deemed to be of national interest that meets characteristics determined by the Administrator, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as a service in the Department of the Navy, or the heads of other Federal agencies, as described in section 53703(d).

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1601; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(A), (b)(1), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(1), (10)(B), (b), Jan. 28, 2008, 122 Stat. 596, 598; Pub. L. 114–120, title III, §302(a)(1), Feb. 8, 2016, 130 Stat. 51; Pub. L. 116–92, div. C, title XXXV, §3506(a), Dec. 20, 2019, 133 Stat. 1970.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53701(1)	46 App.:1271(f).	June 29, 1936, ch. 858, title XI, §1101, as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Sept. 3, 1954, ch. 1265, §1, 68 Stat. 1267; Aug. 7, 1956, ch. 1026, §1(a), (b), 70 Stat. 1087; Pub. L. 86–127, §1(1),

		July 31, 1959, 73 Stat. 272; Pub. L. 86–685, §1, Sept. 2, 1960, 74 Stat. 733; Pub. L. 87–303, §2, Sept. 26, 1961, 75 Stat. 661; Pub. L. 91–469, §29, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92–507, §1, Oct. 19, 1972, 86 Stat. 909; Pub. L. 96–320, title II, §202(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, §220(1), Dec. 22, 1980, 94 Stat. 3291; Pub. L. 97–31, §12(135), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100–710, title I, §104(d), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 102–567, title III, §304, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103–160, title XIII, §1356(1), 1357(b), Nov. 30, 1993, 107 Stat. 1812, 1815; Pub. L. 104–208, title I, §101 [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009–41; Pub. L. 104–239, §11(1), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–136, title XXXV, §3521(b), Nov. 24, 2003, 117 Stat. 1799.
53701(2)	46 App.:1271(h).	
53701(3)	46 App.:1271(g).	
53701(4)	46 App.:1271(o).	
53701(5)	46 App.:1271(j), (k), (m).	
53701(6)	46 App.:1271(f).	
53701(7)	46 App.:1271(a).	
53701(8)	46 App.:1271(c).	
53701(9)	46 App.:1271(e).	
53701(10)	46 App.:1271(d).	
53701(11)	46 App.:1271(i).	
53701(12)	46 App.:1271(n).	
53701(13)	46 App.:1271(b).	

In paragraph (2), the words "but shall not be limited to" are omitted as unnecessary.

In paragraph (4)(B), the words "become or remain" are substituted for "be placed under or continued to be" for clarity.

In paragraph (5)(B)(i), the words "individual who is a citizen of the United States" are substituted for "individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands" in 46 App. U.S.C. 1271(k) because of the definition of "citizen of the United States" in chapter 1 of the revised title. Citizens of the Northern Mariana Islands became citizens or non-citizen nationals of the United States (either of which is a "citizen of the United States" as defined in chapter 1 of the revised title) when the Covenant establishing the Commonwealth of the Northern Mariana Islands became effective on November 4, 1986.

In paragraph (5)(B)(ii), the words "corporation, partnership, association, or other" are omitted as *suppl[us]* [sic]. The words "the term 'State' as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States" in 46 App. U.S.C. 1271(k) are omitted as unnecessary because of the definitions of "State" and "United States" in chapter 1 of the revised title. The definition of "United States" in 46 App. U.S.C. 1271(m) is omitted as unnecessary because of the definition of "United States" in chapter 1. The words "and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement" are omitted as unnecessary because of the definition of "citizen of the United States" in chapter 1 of the revised title.

In paragraph (8), before subparagraph (A), the words "instrument of indebtedness" are substituted for "note, bond, debenture, or other evidence of indebtedness" to eliminate unnecessary words. In subparagraph (B), the reference to section 53717 is substituted for the reference to 46 App. U.S.C. 1272 because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

EDITORIAL NOTES

AMENDMENTS

2019—Pars. (5) to (15). Pub. L. 116–92 redesignated pars. (6) to (15) as (5) to (14), respectively, added a new par. (15), and struck out former par. (5) which defined "eligible export vessel".

2016—Pars. (8) to (15). Pub. L. 114–120 added par. (8) and redesignated former pars. (8) to (14) as (9) to (15), respectively.

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(A), (b)(1). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(A), into this section by inserting "or Administrator" after "Secretary" wherever appearing in pars. (1)(B), (4), and (9)(A). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Pub. L. 110–181, §3522(a)(1), incorporated the substance of the amendment by Pub. L. 109–163, §3507(b)(1), into this section by adding pars. (2) and (13), redesignating former pars. (2) to (13) as (3) to (14), respectively, and striking out former par. (13), which defined "Secretary". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(A), (b)(1), which directed the amendment of section 1271 of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53702. General authority

(a) IN GENERAL.—

(1) **GUARANTEE OF PAYMENTS.**—The Secretary or Administrator, on terms the Secretary or Administrator may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest.

(2) **PREFERRED ELIGIBLE LENDER.**—The Federal Financing Bank shall be the preferred eligible lender of the principal and interest of the guaranteed obligations issued under this chapter.

(b) DIRECT LOANS FOR FISHERIES.—

(1) **IN GENERAL.**—Notwithstanding any other provision of this chapter, any obligation involving a fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this chapter after October 11, 1996, shall be a direct loan obligation for which the Secretary

shall be the obligee, rather than an obligation issued to an obligee other than the Secretary and guaranteed by the Secretary. A direct loan obligation under this subsection shall be treated in the same manner and to the same extent as an obligation guaranteed under this chapter except with respect to provisions of this chapter that by their nature can only be applied to obligations guaranteed under this chapter.

(2) **INTEREST RATE.**—Notwithstanding any other provision of this chapter, the annual rate of interest an obligor shall pay on a direct loan obligation under this subsection is 2 percent plus the additional percent the Secretary must pay as interest to borrow from the Treasury the funds to make the loan.

(3) **MINIMUM OBLIGATIONS AVAILABLE FOR HISTORIC USES.**—Of the direct loan obligations issued by the Secretary under this chapter, the Secretary shall make a minimum of \$59,000,000 available each fiscal year for historic uses.

(4) **USE OF OBLIGATIONS IN LIMITED ACCESS FISHERIES.**—In addition to the other eligible purposes and uses of direct loan obligations provided for in this chapter, the Secretary may issue direct loan obligations for the purpose of—

(A) financing the construction or reconstruction of a fishing vessel in a fishery managed under a limited access system; or

(B) financing the purchase of harvesting rights in a fishery that is federally managed under a limited access system.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1603; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (d), Jan. 6, 2006, 119 Stat. 3555, 3557; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 114–120, title III, §302(a)(2), Feb. 8, 2016, 130 Stat. 52; Pub. L. 116–92, div. C, title XXXV, §3506(b), Dec. 20, 2019, 133 Stat. 1971.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53702(a)	46 App.:1273(a).	June 29, 1936, ch. 858, title XI, §1103(a), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 99–509, title V, §5002, Oct. 21, 1986, 100 Stat. 1912; Pub. L. 103–160, div. A, title XIII, §1356(5), Nov. 30, 1993, 107 Stat. 1814.
53702(b)	46 App.:1279g.	June 29, 1936, ch. 858, title XI, §1112, as added Pub. L. 104–297, title III, §303(a), Oct. 11, 1996, 110 Stat. 3616.

In subsection (a), the words "on terms the Secretary may prescribe" are added based on language in 46 App. U.S.C. 1274(a) (before cl. (1)). The words "the unpaid balance of" are omitted as unnecessary.

EDITORIAL NOTES

CODIFICATION

Subsec. (b) of this section was derived from section 1112 of act June 29, 1936, as added by Pub. L. 104–297, §303(a), which was classified to section 1279g of the former Appendix to this title. Section 1112 was renumbered section 1114 of the Act by Pub. L. 109–163, div. C, title XXXV, §3507(d), Jan. 6, 2006, 119 Stat. 3557, which was repealed by Pub. L. 110–181, div. C, title XXXV, §3522(b), Jan. 28, 2008, 122 Stat. 598. See Historical and Revision notes above and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 amended subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary or Administrator, on terms the Secretary or Administrator may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest."

2016—Subsec. (b)(3), (4). Pub. L. 114–120 added pars. (3) and (4).

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(C), (d). See 2006 Amendment note below and Codification note above.

Subsec. (a). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(C), into this section by inserting "or Administrator" after "Secretary" in two places. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(C), which directed the amendment of section 1273(a) of the former Appendix to this title from which subsec. (a) of this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsec. (a) and Historical and Revision notes above.

§53703. Application and administration

(a) **TIME FOR DECISION.**—

(1) **IN GENERAL.**—The Secretary or Administrator shall approve or deny an application for a loan guarantee under this chapter within 270 days after the date on which the signed application is received by the Secretary or Administrator.

(2) **EXTENSION.**—On request by an applicant, the Secretary or Administrator may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application was received by the Secretary or Administrator.

(b) **CERTIFICATION OF REVIEW.**—The Secretary or Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary or Administrator certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to the obligor and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application, has been made.

(c) **INDEPENDENT ANALYSIS.**—

(1) **IN GENERAL.**—To assess and mitigate the risks due to factors associated with markets, technology, financial, or legal structures related to an application or guarantee under this chapter, the Secretary or Administrator may utilize third party experts, including legal counsel, to—

(A) process and review applications under this chapter, including conducting independent analysis and review of aspects of an application;

(B) represent the Secretary or Administrator in structuring and documenting the obligation guarantee;

(C) analyze and review aspects of, structure, and document the obligation guarantee during the term of the guarantee;

(D) recommend financial covenants or financial ratios to be met by the applicant during the time a guarantee under this chapter is outstanding that are—

- (i) based on the financial covenants or financial ratios, if any, that are then applicable to the obligor under private sector credit agreements; and
- (ii) in lieu of other financial covenants applicable to the obligor under this chapter with respect to requirements regarding long-term debt-to-equity, minimum working capital, or minimum amount of equity; and

(E) represent the Secretary or Administrator to protect the security interests of the Government relating to an obligation guarantee.

(2) PRIVATE SECTOR EXPERT.—Independent analysis, review, and representation conducted under this subsection shall be performed by a private sector expert in the applicable field who is selected by the Secretary or Administrator.

(d) VESSELS OF NATIONAL INTEREST.—

(1) NOTICE OF FUNDING.—The Secretary or Administrator may post a notice in the Federal Register regarding the availability of funding for obligation guarantees under this chapter for the construction, reconstruction, or reconditioning of a Vessel of National Interest and include a timeline for the submission of applications for such vessels.

(2) VESSEL CHARACTERISTICS.—

(A) IN GENERAL.—The Secretary or Administrator, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating when it is not operating as service in the Department of the Navy, or the heads of other Federal agencies, shall develop and publish a list of vessel types that would be considered Vessels of National Interest.

(B) REVIEW.—Such list shall be reviewed and revised every four years or as necessary, as determined by the Administrator.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1604; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (2)(G), (b)(7), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 116–92, div. C, title XXXV, §3506(c), Dec. 20, 2019, 133 Stat. 1971.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53703(a)	46 App.:1274(n).	June 29, 1936, ch. 858, title XI, §1104A(f), (n), as added Pub. L. 108–136, title XXXV, §§3523(b), 3525, Nov. 24, 2003, 117 Stat. 1800, 1801.
53703(b)	46 App.:1274(f).	

EDITORIAL NOTES

AMENDMENTS

2019—Pub. L. 116–92, §3506(c)(1), substituted "and administration" for "procedures" in section catchline.

Subsecs. (c), (d). Pub. L. 116–92, §3506(c)(2), added subsecs. (c) and (d).

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D), (2)(G), (b)(7). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), (2)(G), (b)(7), into this section by inserting "or Administrator" after "Secretary" wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), (2)(G), (b)(7), which directed the amendment of section 1274(f), (n) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXPEDITED CONSIDERATION OF LOW-RISK APPLICATIONS

Pub. L. 116–92, div. C, title XXXV, §3506(j), Dec. 20, 2019, 133 Stat. 1974, provided that:

"(1) IN GENERAL.—In accordance with the requirements of this subsection, the Administrator shall establish an administrative process and issue guidance for the expedited consideration of low-risk applications submitted under chapter 537 of title 46, United States Code.

"(2) STAKEHOLDER COMMENT.—Not later than 180 days after the date of enactment of this section [Dec. 20, 2019], the Administrator of the Maritime Administration shall publish in the Federal Register a notice of a 45-day public comment period to request stakeholder input and recommendations to establish the administrative process required under this subsection, including proposals to assist applicants—

"(A) in the development and submission of initial applications;

"(B) in meeting requests for supplemental information made by the Administrator; and

"(C) to comply with other requirements made by the Administrator to ensure the expedited consideration of applications.

"(3) INDUSTRY BEST PRACTICES.—The administrative process established under this subsection shall utilize, to the extent practicable, relevant Federal and industry best practices found in the maritime and shipbuilding industries.

"(4) FINAL GUIDANCE.—Not later than 90 days after the conclusion of the public comment period required under paragraph (2), the Administrator shall publish in the Federal Register final guidance to assist applicants in the preparation and filing of applications under this subsection."

REVIEW OF APPLICATIONS FOR LOANS AND GUARANTEES

Pub. L. 110–181, div. C, title XXXV, §3517, Jan. 28, 2008, 122 Stat. 595, provided that:

"(a) FINDINGS.—The Congress makes the following findings:

"(1) The maritime loan guarantee program was established by the Congress through the Merchant Marine Act, 1936 [see Short Title of 1936 Amendment note set out under section 101 of this title] to encourage domestic shipbuilding by making available federally backed loan guarantees for new construction to ship owners and operators.

"(2) The maritime loan guarantee program has a long and successful history of ship construction with a low historical default rate.

"(3) The current process for review of applications for maritime loans in the Department of Transportation has effectively discontinued the program as envisioned by the Congress.

"(4) The President has requested no funding for the loan guarantee program despite the stated national policy to foster the development and encourage the maintenance of a merchant marine in section 50101 of title 46, United States Code.

"(5) United States commercial shipyards were placed at a competitive disadvantage in the world shipbuilding market by government subsidized foreign commercial shipyards.

"(6) The maritime loan guarantee program has the potential to modernize shipyards and the ships of the United States coastwise trade and restore a competitive position in the world shipbuilding market for United States shipyards.

"(7) The maritime loan guarantee program is a useful tool to encourage domestic shipbuilding, preserving a vital industrial capacity critical to the security of the United States.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—Within 180 days after the date of enactment of this Act [Jan. 28, 2008], the Administrator of the Maritime Administration shall develop and implement a comprehensive plan for the review of applications for loan guarantees under chapter 537 of title 46, United States Code.

"(2) DEADLINE FOR ACTION ON APPLICATION.—

"(A) TRADITIONAL APPLICATIONS.—In the comprehensive plan the Administrator will ensure that within the 90-day period following receipt of all pertinent documentation required for review of a traditional loan application, the application shall be either accepted or rejected.

"(B) NONTRADITIONAL APPLICATIONS.—In the comprehensive plan the Administrator will ensure that within the 180-day period following receipt of all pertinent documentation required for review of a nontraditional loan application, the application shall be either accepted or rejected.

"(c) SUBMISSION TO CONGRESS.—The Administrator shall submit a copy of the comprehensive plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives within 180 days after the date of enactment of this Act [Jan. 28, 2008].

"(d) DEFINITIONS.—In this section:

"(1) TRADITIONAL APPLICATION.—The term 'traditional application' means an application for a loan, guarantee, or commitment to guarantee submitted pursuant to chapter 537 of title 46, United States Code, that involves a market, technology, and financial structure of a type that has proven successful in previous applications and does not present an unreasonable risk to the United States, as determined by the Administrator of the Maritime Administration.

"(2) NONTRADITIONAL APPLICATION.—The term 'nontraditional application' means an application for a loan, guarantee, or commitment to guarantee submitted pursuant to chapter 537 of title 46, United States Code, that is not a traditional application, as determined by the Administrator of the Maritime Administration."

§53704. Funding limits

(a) GENERAL LIMITATIONS.—The total unpaid principal amount of obligations guaranteed under this chapter and outstanding at one time may not exceed \$12,000,000,000. Of that amount, \$850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities.

(b) ADDITIONAL LIMITATIONS.—Additional limitations may not be imposed on new commitments to guarantee loans for any fiscal year, except in amounts established in advance by annual authorization laws. A vessel eligible for a guarantee under this chapter may not be denied eligibility because of its type.

(c) LIMITS BASED ON RISK FACTORS.—

(1) DEFINITION.—In this subsection, the term "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) SYSTEM OF RISK CATEGORIES.—The Secretary or Administrator shall—

(A) establish, and update annually, a system of risk categories for obligations guaranteed under this chapter that categorizes the relative risk of guarantees based on the risk factors set forth in paragraph (4);

(B) determine annually for each risk category a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed for obligations in the category; and

(C) ensure that each risk category is comprised of loans that are relatively homogeneous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that are expected to be associated with the loans in the category.

(3) USE OF SYSTEM.—

(A) PLACING OBLIGATION IN CATEGORY.—Before making a guarantee under this chapter for an obligation, and annually for projects subject to a guarantee, the Secretary or Administrator shall apply the risk factors specified in paragraph (4) to place the obligation in a risk category established under paragraph (2).

(B) REDUCTION OF AVAILABLE AMOUNT.—The Secretary or Administrator shall consider the total amount available to the Secretary or Administrator for making guarantees under this chapter to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this chapter for an obligation; by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A).

(C) ESTIMATED COST.—The estimated cost to the United States Government of a guarantee under this chapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) RESTRICTION ON FURTHER GUARANTEES.—The Secretary or Administrator may not guarantee obligations under this chapter after the total amount available to the Secretary or Administrator under appropriations laws for the cost of loan guarantees is considered to be reduced to zero under subparagraph (B).

(4) RISK FACTORS.—The risk factors referred to in this subsection are—

(A) the period for which an obligation is guaranteed or to be guaranteed;

(B) the amount of an obligation guaranteed or to be guaranteed in relation to the total cost of the project financed or to be financed by the obligation;

(C) the financial condition of an obligor or applicant for a guarantee;

(D) if applicable, other guarantees related to the project;

(E) if applicable, the projected employment of each vessel or equipment to be financed with an obligation;

(F) if applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation;

(G) the collateral provided for a guarantee for an obligation;

(H) the management and operating experience of an obligor or applicant for a guarantee;

(I) whether a guarantee under this chapter is or will be in effect during the construction period of the project; and

(J) the concentration risk presented by an unduly large percentage of loans outstanding by any one borrower or group of affiliated borrowers.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1604; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 116–92, div. C, title XXXV, §3506(d), Dec. 20, 2019, 133 Stat. 1972.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53704(a)	46 App.:1273(f) (1st sentence).	June 29, 1936, ch. 858, title XI, §1103(f), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 93–70, §3, July 10, 1973, 87 Stat. 168; Pub. L. 94–127, §5, Nov. 13, 1975, 89 Stat. 681; Pub. L. 95–298, §5,

		June 26, 1978, 92 Stat. 340; Pub. L. 96–320, title II, §203(b)(1), Aug. 3, 1980, 94 Stat. 994; Pub. L. 96–561, title II, §220(2), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97–35, title XVI, §1606(a), (b), Aug. 13, 1981, 95 Stat. 752; Pub. L. 97–424, title IV, §425, Jan. 6, 1983, 96 Stat. 2167; Pub. L. 103–160, title XIII, §1356(2)(A), Nov. 30, 1993, 107 Stat. 1812; Pub. L. 108–136, title XXXV, §3528(b), Nov. 24, 2003, 117 Stat. 1802.
53704(b) 53704(c)	46 App.:1273(f) (2d, last sentences). 46 App.:1273(h).	June 29, 1936, ch. 858, title XI, §1103(h), as added Pub. L. 104–239, §13(a), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–136, title XXXV, §3528(b), Nov. 24, 2003, 117 Stat. 1802.

EDITORIAL NOTES

AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92, §3506(d)(1), substituted "that amount, \$850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities." for "that amount—" and pars. (1) and (2) which read as follows:

"(1) \$850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities; and

"(2) \$3,000,000,000 shall be limited to obligations related to eligible export vessels."

Subsec. (c)(4). Pub. L. 116–92, §3506(d)(2), redesignated subpars. (B) to (K) as (A) to (J), respectively, and struck out former subpar. (A) which read as follows: "if applicable, the country risk for each eligible export vessel financed or to be financed by an obligation;".

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(C). See 2006 Amendment note below.

Subsec. (c). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(C), into this section by inserting "or Administrator" after "Secretary" wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(C), which directed the amendment of section 1273(h) of the former Appendix to this title from which subsec. (c) of this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsec. (c) and Historical and Revision notes above.

§53705. Pledge of United States Government

(a) **FULL FAITH AND CREDIT.**—The full faith and credit of the United States Government is pledged to the payment of a guarantee made under this chapter, for both principal and interest, including interest (as may be provided for in the guarantee) accruing between the date of default under a guaranteed obligation and the date of payment in full of the guarantee.

(b) **INCONTESTABILITY.**—A guarantee or commitment to guarantee made under this chapter is conclusive evidence of the eligibility of the obligation for the guarantee. The validity of a guarantee or commitment to guarantee made under this chapter is incontestable.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1606; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53705(a)	46 App.:1273(d).	June 29, 1936, ch. 858, title XI, §1103(d), (e) (1st sentence), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(1), Oct. 30, 1984, 98 Stat. 3130.
53705(b)	46 App.:1273(e) (1st sentence).	

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181 repealed Pub. L. 109–163, §3507(a)(1)(C). See 2006 Amendment note below.

2006—Pub. L. 109–163, §3507(a)(1)(C), which directed the amendment of section 1273(e) of the former Appendix to this title from which this section was derived in part by striking "Secretary" each place it appears and inserting "Secretary or Administrator", was repealed by Pub. L. 110–181. See Historical and Revision notes above.

§53706. Eligible purposes of obligations

(a) **IN GENERAL.**—To be eligible for a guarantee under this chapter, an obligation must aid in any of the following:

(1)(A) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a vessel designed principally for research, or for commercial use—

(i) in the coastwise or intercoastal trade;

(ii) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States;

(iii) in foreign trade as defined in section 109(b) of this title;

- (iv) as an ocean thermal energy conversion facility or plantship; or
- (v) as a floating drydock in the construction, reconstruction, reconditioning, or repair of vessels.

(B) A guarantee under subparagraph (A) may not be made more than one year after delivery of the vessel (or redelivery if the vessel was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or of facilities or equipment related to marine operations.

(2) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a vessel owned by citizens of the United States and designed principally for research, or for commercial use in the fishing industry.

(3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility—

(A) for which an obligation was guaranteed under this chapter; and

(B) that, under subchapter II of this chapter—

- (i) is a vessel or fishery facility for which an obligation was accelerated and paid;
- (ii) was acquired by the Federal Ship Financing Fund or successor account under section 53717 of this title; or
- (iii) was sold at foreclosure begun or intervened in by the Secretary or Administrator.

(4) Financing any part of the repayment to the United States Government of any amount of a construction-differential subsidy paid for a vessel.

(5) Refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in paragraphs (1)–(4), including a short-term obligation incurred to obtain temporary funds with the intention of refinancing.

(6) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a fishery facility.

(7) Financing or refinancing—

(A) the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (including the reimbursement of obligors for expenditures previously made for such a purchase);

(B) activities that assist in the transition to reduced fishing capacity; or

(C) technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety.

(8) Financing (including reimbursement of an obligor for expenditures previously made for) the reconstruction, reconditioning, retrofitting, repair, reconfiguration, or similar work in a shipyard located in the United States.

(b) NON-VESSELS TREATED AS VESSELS.—An obligation guaranteed under subsection (a)(6) or (7) shall be treated, for purposes of this chapter, in the same manner and to the same extent as an obligation that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions that by their nature can only be applied to vessels.

(c) PRIORITIES FOR CERTAIN VESSELS.—

(1) VESSELS.—In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Administrator shall give priority to—

(A) a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note);

(B) after applying subparagraph (A), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—

- (i) is suitable for service as a naval auxiliary in time of war or national emergency; and
- (ii) meets a shortfall in sealift capacity or capability; and

(C) after applying subparagraphs (A) and (B), Vessels of National Interest.

(2) TIME FOR DETERMINATION.—The Secretary of Defense shall determine whether a vessel satisfies paragraph (1)(B) not later than 30 days after receipt of a request from the Administrator for such a determination.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1606; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (2)(A), (B), (b)(2), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 109–479, title II, §209, Jan. 12, 2007, 120 Stat. 3617; Pub. L. 110–181, div. C, title XXXV, §3522(a)(2), (10)(B), (b), Jan. 28, 2008, 122 Stat. 596, 598; Pub. L. 116–92, div. C, title XXXV, §3506(e), Dec. 20, 2019, 133 Stat. 1972; Pub. L. 118–31, div. C, title XXXV, §3536(a), Dec. 22, 2023, 137 Stat. 835.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53706(a)	46 App.:1274(a) (less last sentence).	June 29, 1936, ch. 858, title XI, §1104A(a) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 96–320, title II, §202(b), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, §220(3)(A), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(2)–(5), Oct. 30, 1984, 98 Stat. 3130; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, title XIII, §1356(3)(A), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104–208, title I, §101 [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009–41; Pub. L. 104–297, title III, §302(a)(1)–(4), Oct. 11, 1996, 110 Stat. 3615.
53706(b)	46 App.:1274(a) (last sentence).	

In subsection (a), before paragraph (1), the words "To be eligible for a guarantee under this chapter, an obligation must aid in any of the following" are substituted for "Pursuant to the authority granted under section 1273(a) of this Appendix, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in" to eliminate unnecessary words.

In subsection (a)(2), the words "citizens of the United States" are substituted for "citizens or nationals of the United States or citizens of the Northern Mariana Islands" because of the definition of "citizen of the United States" in chapter 1 of the revised title. Citizens of the Northern Mariana Islands became citizens or non-citizen nationals of the United States (either of which is a "citizen of the United States" as defined in chapter 1 of the revised title) when the Covenant establishing the Commonwealth of the Northern Mariana Islands became effective November 4, 1986.

EDITORIAL NOTES

REFERENCES IN TEXT

Section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (a)(7)(A), is section 303(d)(4) of Pub. L. 94–265, which is classified to section 1853(d)(4) of Title 16, Conservation.

The Maritime Security Act of 2003, referred to in subsec. (c)(1)(A), is title XXXV of div. C of Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1788. Subtitle D of the Act amended section 1273 of the former Appendix to this title and enacted provisions set out as a note under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 101 of this title and Tables.

AMENDMENTS

2023—Subsec. (a)(8). Pub. L. 118–31 added par. (8).

2019—Subsec. (a)(1)(A). Pub. L. 116–92, §3506(e)(1)(A), struck out "(including an eligible export vessel)" after "reconditioning of a vessel" in introductory provisions.

Subsec. (a)(1)(A)(vi). Pub. L. 116–92, §3506(e)(1)(B)–(D), struck out cl. (vi) which read as follows: "as an eligible export vessel in worldwide trade."

Subsec. (c)(1)(C). Pub. L. 116–92, §3506(e)(2), added subpar. (C).

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D), (2)(A), (B), (b)(2). See 2006 Amendment note below.

Subsec. (a)(3)(B)(iii). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), into this section by inserting "or Administrator" after "Secretary". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (c). Pub. L. 110–181, §3522(a)(2), incorporated the substance of the amendments by Pub. L. 109–163, §3507(a)(2)(A), (B), (b)(2), by amending subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"PRIORITIES FOR CERTAIN VESSELS.—In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Secretary shall give priority to—

"(1) a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and

"(2) after applying paragraph (1), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—

"(A) is suitable for service as a naval auxiliary in time of war or national emergency; and

"(B) meets a shortfall in sealift capacity or capability."

See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2007—Subsec. (a)(7). Pub. L. 109–479 amended par. (7) generally. Prior to amendment, par. (7) read as follows: "Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the purchase of an individual fishing quota in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4))."

2006—Pub. L. 109–163, §3507(a)(1)(D), (2)(A), (B), (b)(2), which directed the amendment of sections 1273(i), (j) and 1274(a) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes for subsecs. (a)(3)(B)(iii) and (c) and Historical and Revision notes above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

PROHIBITION OF NEW LOANS FOR CONSTRUCTION OF FISHING VESSELS UNDER CERTAIN CONDITIONS

Pub. L. 104–297, title III, §302(b)(2), Oct. 11, 1996, 110 Stat. 3615, as amended by Pub. L. 105–277, div. C, title II, §212, Oct. 21, 1998, 112 Stat. 2681–635; Pub. L. 107–206, title I, §1103, Aug. 2, 2002, 116 Stat. 884; Pub. L. 114–120, title III, §302(b), Feb. 8, 2016, 130 Stat. 52, provided that: "No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons [(as measured under chapter 143 of that title)], or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery, in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty, in fisheries that are under the jurisdiction of the North Pacific Fishery Management Council and managed under a fishery management plan issued under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or in the Pacific whiting fishery that is under the jurisdiction of the Pacific Fishery Management Council and managed under a fishery management plan issued under that Act. Any fishing vessel operated in fisheries under the jurisdiction of the North Pacific Fishery Management Council and managed under a fishery management plan issued under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or in the Pacific whiting fishery under the jurisdiction of the Pacific Fishery Management Council and managed under a fishery management plan issued under that Act, and that is replaced by a vessel that is constructed or rebuilt with a loan or loan guarantee provided by the Federal Government may not be used to harvest fish in any fishery under the jurisdiction of any regional fishery management council, other than a fishery under the jurisdiction of the North Pacific Fishery Management Council or the Pacific Fishery Management Council."

[Pub. L. 107–206, title I, §1103, Aug. 2, 2002, 116 Stat. 884, which directed the amendment of title II of division C of Public Law 105–277 by substituting "of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title)" for "of more than 750 gross registered tons", was executed to section 302(b)(2) of Pub. L. 104–297, set out above, as amended by section 212 of Pub. L. 105–277, to reflect the probable intent of Congress.]

§53707. Findings related to obligors and operators

(a) **RESPONSIBLE OBLIGOR.**—The Secretary or Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary or Administrator finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will serve as security for the guarantee.

(b) **OPERATORS OF LINER VESSELS.**—The Administrator may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under this chapter unless the Chairman of the Federal Maritime Commission certifies that the operator of the vessel has not been found by the Commission to have committed, within the previous 5 years—

- (1) a violation of part A of subtitle IV of this title that involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port; or
- (2) a violation of part B of subtitle IV of this title.

(c) **OPERATORS OF FISHING VESSELS.**—The Secretary may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel has been—

- (1) held liable, or the vessel has been held liable in rem, for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;
- (2) found guilty of an offense under section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;
- (3) held liable for a civil or criminal penalty under section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or
- (4) held liable for a civil penalty by the Coast Guard under this title or title 33 and not paid the assessed fine.

(d) **WAIVERS CONCERNING FINANCIAL CONDITION.**—The Secretary or Administrator shall prescribe regulations concerning circumstances under which waivers of, or exceptions to, otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

- (1) the economic soundness requirements in section 53708(a) of this title are met after the waiver of the financial condition requirement; and
- (2) if the Secretary or Administrator considers necessary, the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for any significant increase in risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1607; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (b)(3)(B), (C), (c)(1), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(3), (b), Jan. 28, 2008, 122 Stat. 597, 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53707(a)	46 App.:1274(b)(1).	June 29, 1936, ch. 858, title XI, §1104A(b)(1) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 911; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.
53707(b)	46 App.:1273a(a).	Pub. L. 105–258, title IV, §401, Oct. 14, 1998, 112 Stat. 1916.
53707(c)	46 App.:1273a(b).	
53707(d)	46 App.:1274(d)(4).	June 29, 1936, ch. 858, title XI, §1104A(d)(4), as added Pub. L. 108–136, title XXXV, §3522, Nov. 24, 2003, 117 Stat. 1800.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D), (b)(3)(B), (C), (c)(1). See 2006 Amendment note below.

Subsec. (a). Pub. L. 110–181, §3522(a)(3)(A), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), into this section by inserting "or Administrator" after "Secretary" in two places. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (b). Pub. L. 110–181, §3522(a)(3)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(c)(1), into this section by substituting "Administrator" for "Secretary of Transportation". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (c). Pub. L. 110–181, §3522(a)(3)(C), struck out "of Commerce" after "The Secretary" in introductory provisions.

Subsec. (d). Pub. L. 110–181, §3522(a)(3)(A), (D), incorporated the substance of the amendment by Pub. L. 109–163, §3507(b)(3)(B), (C), into this section by inserting "or Administrator" after "Secretary" in introductory provisions and in par. (2) by inserting "if the Secretary or Administrator considers necessary," before "the waiver" and substituting "any significant increase in" for "the increased". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), (b)(3)(B), (C), (c)(1), which directed the amendment of sections 1273a(a) and 1274(b)(1), (d)(4)(B) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes for subsecs. (a), (b), and (d) and Historical and Revision notes above.

§53708. Findings related to economic soundness

(a) BY ADMINISTRATOR.—The Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Administrator finds that the property or project for which the obligation will be executed will be economically sound. In making that finding, the Administrator shall consider—

- (1) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this chapter is in effect;
- (2) the market potential for employment of the vessel over the life of the guarantee;
- (3) projected revenues and expenses associated with employment of the vessel;
- (4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;
- (5) other relevant criteria; and
- (6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

(b) BY SECRETARY.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that—

- (1) the property or project for which the obligation will be executed will be economically sound; and
- (2) for a fishing vessel, the purpose of the financing or refinancing is consistent with—
 - (A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or
 - (B) the need for technical improvements, including increased fuel efficiency or improved safety.

(c) USED FISHING VESSELS AND FACILITIES.—The Secretary may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—

- (1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or
- (2) used—
 - (A) in the harvesting of fish from an underused fishery; or
 - (B) for a purpose described in the definition of "fishery facility" in section 53701 of this title with respect to an underused fishery.

(d) INDEPENDENT ANALYSIS.—The Secretary or Administrator may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, or financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator.

(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary or Administrator may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, or financial structures.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1608; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (2)(D), (b)(3)(A), (4), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(4), (b), Jan. 28, 2008, 122 Stat. 597, 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53708(a)	46 App.:1274(d)(1)(A).	June 29, 1936, ch. 858, title XI, §1104A(d)(1), (2) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 96–561, title II, §220(3)(C), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, §1606(c), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98–595, §1(6), Oct. 30, 1984, 98 Stat. 3130; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.
53708(b)	46 App.:1274(d)(1)(B).	
53708(c)	46 App.:1274(d)(2).	
53708(d)	46 App.:1274(f)(2).	June 29, 1936, ch. 858, title XI, §1104A(f)(2), (3), as added Pub. L. 108–136, title XXXV, §3526(2)(C), Nov. 24, 2003, 117 Stat. 1801.
53708(e)	46 App.:1274(f)(3).	

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D), (2)(D), (b)(3)(A), (4). See 2006 Amendment note below.

Subsec. (a). Pub. L. 110–181, §3522(a)(4)(A), (B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(2)(D), (b)(3)(A), into this section by substituting in the heading, "Administrator" for "Secretary of Transportation" and, in introductory provisions, "Administrator may" for "Secretary of Transportation may", "Administrator finds" for "Secretary finds", and "Administrator shall" for "Secretary shall". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (b). Pub. L. 110–181, §3522(a)(4)(C), (D), struck out "of Commerce" after "Secretary" in heading and the first time appearing in introductory provisions.

Subsec. (c). Pub. L. 110–181, §3522(a)(4)(D), struck out "of Commerce" after "Secretary".

Subsec. (d). Pub. L. 110–181, §3522(a)(4)(E), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), (b)(4)(A), (C), into this section by inserting "or Administrator" after "The Secretary" and substituting "or financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator." for "financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary." See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (e). Pub. L. 110–181, §3522(a)(4)(F), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), (b)(4)(B), into this section by inserting "or Administrator" after "chapter, the Secretary" and substituting "or financial structures" for "financial structures, or other risk factors identified by the Secretary". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), (2)(D), (b)(3)(A), (4), which directed the amendment of section 1274(d)(1)(A), (f)(2), (3) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes for subsecs. (a), (d), and (e) and Historical and Revision notes above.

§53709. Amount of obligations

(a) IN GENERAL.—The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by—

- (1) the amount paid by or for the account of the obligor (as determined by the Secretary or Administrator, which determination shall be conclusive) for the construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or
- (2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) LIMITATIONS ON AMOUNT BORROWED.—

(1) IN GENERAL.—Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary or Administrator, of the vessel used as security for the guarantee.

(2) CERTAIN APPROVED VESSELS.—The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if—

(A) the size and speed of the vessel are approved by the Secretary or Administrator;

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(4) OTEC.—For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount of an obligation having more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Secretary or Administrator may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1609; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 116–92, div. C, title XXXV, §3506(f), Dec. 20, 2019, 133 Stat. 1972.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53709(a)	46 App.:1273(c).	June 29, 1936, ch. 858, title XI, §1103(c), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166.
53709(b)	46 App.:1274(b)(2).	June 29, 1936, ch. 858, title XI, §1104A(b)(2), (last 2 sentences), (c)(1) (last sentence) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 95–257, Apr. 7, 1978, 92 Stat. 194; Pub. L. 96–320, title II, §202(c), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II,

		§220(3)(B), Dec. 22, 1980, 94 Stat. 3293; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 99–509, title V, §5003, Oct. 21, 1986, 100 Stat. 1912; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, div. A, title XIII, §1356(3)(B), (C), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104–297, title III, §302(a)(5), Oct. 11, 1996, 110 Stat. 3615.
53709(c) 53709(d)	46 App.:1274(c)(1) (last sentence). 46 App.:1274(i).	June 29, 1936, ch. 858, title XI, §1104A(i), as added Pub. L. 103–160, div. A, title XIII, §1356(3)(E), Nov. 30, 1993, 107 Stat. 1814.
53709(e)	46 App.:1274(b) (last 2 sentences).	

Subsections (a) and (d) are substituted for the source provisions for clarity and to eliminate unnecessary words.

EDITORIAL NOTES

REFERENCES IN TEXT

Section 509 of the Merchant Marine Act, 1936, referred to in subsec. (b)(2)(B), is section 509 of act [June 29, 1936, ch. 858](#), 49 Stat. 1985, which is set out as a note under section 53101 of this title.

AMENDMENTS

2019—Subsec. (b)(3) to (6). Pub. L. 116–92 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) and par. (6) which read as follows:

"(3) BARGES.—For a barge constructed without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

"(6) ELIGIBLE EXPORT VESSELS.—For an eligible export vessel, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost."

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(C), (D). See 2006 Amendment note below.

Subsecs. (a)(1), (b)(1), (2)(A), (d). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(C), (D), into this section by inserting "or Administrator" after "Secretary". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(C), (D), which directed the amendment of sections 1273(c) and 1274(b)(2), (c)(1), (i) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsecs. (a)(1), (b)(1), (2)(A), (d) and Historical and Revision notes above.

§53710. Contents of obligations

(a) IN GENERAL.—An obligation guaranteed under this chapter must—

(1) provide for payments by the obligor satisfactory to the Secretary or Administrator;

(2) provide for interest (exclusive of guarantee fees and other fees) at a rate not more than the annual rate on the unpaid principal that the Secretary or Administrator determines is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary or Administrator;

(3) have a maturity date satisfactory to the Secretary or Administrator, but—

(A) not more than 25 years after the date of delivery of the vessel used as security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of—

(i) 25 years after the date of delivery of the vessel; or

(ii) the remaining years of useful life of the vessel as determined by the Secretary or Administrator; and

(4) provide, or a related agreement must provide, that if the vessel used as security for the guarantee is a delivered vessel, the vessel shall be—

(A) in class A–1, American Bureau of Shipping, or meet other standards acceptable to the Secretary or Administrator, with all required certificates, including marine inspection certificates of the Coast Guard, and with all outstanding requirements and recommendations necessary for class retention accomplished, unless the Secretary or Administrator permits a deferment of repairs necessary to meet these requirements;

(B) well equipped, in good repair, and in every respect seaworthy and fit for service; and

(C) documented under the laws of the United States for the term of the guarantee of the obligation or until the obligation is paid in full, whichever is sooner.

(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

(1) IN GENERAL.—With the Administrator's approval, if the vessel used as security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in section 503 of the Merchant Marine Act, 1936, an obligation guaranteed under this chapter or a related agreement may provide that—

(A) the only recourse by the United States Government against the obligor for payments under the guarantee will be repossession of the vessel and assignment of insurance claims; and

(B) the obligor's liability for payments under the guarantee will be satisfied and discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2).

(2) SURRENDER OF VESSEL.—

(A) IN GENERAL.—On surrender, the vessel must be—

(i) free and clear of all liens and encumbrances except the security interest conveyed to the Administrator under this chapter;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) COVERING DEFICIENCIES BY INSURANCE.—To the extent covered by insurance, a deficiency related to a requirement in subparagraph (A) may be satisfied by assignment of the obligor's insurance claims to the Government.

(c) OTHER PROVISIONS TO PROTECT SECURITY INTERESTS AND PROVIDE FOR THE FINANCIAL STABILITY OF THE OBLIGOR.—An obligation guaranteed under this chapter and any related agreement must contain other provisions, which shall include—

(1) provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary or Administrator), liens and releases of liens, payment of taxes; and

(2) any other provisions that the Secretary or Administrator may prescribe.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1610; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (2)(C), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(5), (9)(A), (10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 116–92, div. C, title XXXV, §3506(g), Dec. 20, 2019, 133 Stat. 1972.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53710(a)(1)	46 App.:1274(b)(4).	June 29, 1936, ch. 858, title XI, §1104A(b) (3)–(7), (h) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 911, 914; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(7), Oct. 30, 1984, 98 Stat. 3131; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, title XIII, §1356(3)(C), Nov. 30, 1993, 107 Stat. 1813.
53710(a)(2)	46 App.:1274(b)(5).	
53710(a)(3)	46 App.:1274(b)(3).	
53710(a)(4)	46 App.:1274(b)(6).	
53710(b)	46 App.:1274(b)(7).	
53710(c)	46 App.:1274(h).	

During review of this bill, the American Bureau of Shipping, through counsel, explained that it disagrees with an existing interpretation by the Maritime Administration of language restated in subsection (a)(4)(A) of this section, and requested the Committee to clarify that this codification should not be construed as a ratification of that regulatory interpretation. The Committee therefore states that this codification should not be construed as an expression of any opinion whatsoever concerning any such administrative interpretation.

In subsection (a)(3), the words "subject to the provisions of paragraph (2) of subsection (c) of this section" are omitted as unnecessary.

In subsection (a)(4)(B), the words "well equipped, in good repair, and in every respect seaworthy and fit for service" are substituted for "tight, stanch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service" to eliminate unnecessary words.

In subsection (b)(1), the reference to section 503 of the Merchant Marine Act, 1936, is substituted for the reference to "subchapter V of this chapter" because the relevant characteristics referred to in the text are contained in that section and because that section is part of the construction-differential subsidy program, which is not being restated.

EDITORIAL NOTES

REFERENCES IN TEXT

Section 503 of the Merchant Marine Act, 1936, referred to in subsec. (b)(1), is section 503 of act [June 29, 1936, ch. 858](#), 49 Stat. 1985, which is set out as a note under section 53101 of this title.

AMENDMENTS

2019—Subsec. (a)(4)(A). Pub. L. 116–92, §3506(g)(1)(A)(i), struck out "or, in the case of an eligible export vessel, of the appropriate foreign authorities under a treaty, convention, or other international agreement to which the United States is a party" after "certificates of the Coast Guard".

Subsec. (a)(4)(C). Pub. L. 116–92, §3506(a)(1)(A)(ii)–(C), added subpar. (C).

Subsec. (c). Pub. L. 116–92, §3506(g)(2), in heading, inserted "and Provide for the Financial Stability of the Obligor" after "Interests" and, in text, inserted "provisions, which shall include—" after "must contain other" and par. (1) designation before "provisions for the protection of", substituted "; and" for ", and" for ", and other matters that the Secretary or Administrator may prescribe.", and added par. (2).

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D), (2)(C). See 2006 Amendment note below.

Subsec. (a). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), into this section by inserting "or Administrator" after "Secretary" wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (b). Pub. L. 110–181, §3522(a)(5), (9)(A), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(2)(C), into this section by substituting "Administrator's" for "Secretary's" in introductory provisions of par. (1) and "Administrator" for "Secretary" in par. (2)(A)(i). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (c). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), into this section by inserting "or Administrator" after "Secretary" in two places. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), (2)(C), which directed the amendment of section 1274(b)(3)–(7), (h) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes for subsecs. (a), (b), and (c) and Historical and Revision notes above.

§53711. Security interest

(a) **IN GENERAL.**—The Secretary or Administrator may guarantee an obligation under this chapter only if the obligor conveys or agrees to convey to the Secretary or Administrator a security interest the Secretary or Administrator considers necessary to protect the interest of the United States Government.

(b) **MULTIPLE VESSELS AND TYPES OF SECURITY.**—The security interest may relate to more than one vessel and may consist of more than one type of security. If the security interest relates to more than one vessel, the obligation may have the latest maturity date allowable under section 53710(a)(3) of this title for any of the vessels used as security for the guarantee. However, the Secretary or Administrator may require such payments of principal prior to maturity, with respect to all related obligations, as the Secretary or Administrator considers necessary to maintain adequate security for the guarantee.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1612; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (D), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53711(a)	46 App.:1273(b).	June 29, 1936, ch. 858, title XI, §1103(b), as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166.
53711(b)	46 App.:1274(c)(1) (1st sentence), (2).	June 29, 1936, ch. 858, title XI, §1104A(c)(1) (1st sentence), (2) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 912; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

In subsection (a), the words "a security interest the Secretary considers necessary" are substituted for "such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require" to eliminate unnecessary words.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(C), (D). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(C), (D), into this section by inserting "or Administrator" after "Secretary" wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(C), (D), which directed the amendment of sections 1273(b) and 1274(c) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53712. Monitoring financial condition and operations of obligor

(a) **IN GENERAL.**—The Secretary or Administrator shall monitor the financial condition and operations of the obligor on a regular basis during the term of the guarantee. The Secretary or Administrator shall document the results of the monitoring on an annual or quarterly basis depending on the condition of the obligor. If the Secretary or Administrator determines that the financial condition of the obligor warrants additional protections to the Secretary or Administrator, the Secretary or Administrator shall take appropriate action under subsection (b). If the Secretary or Administrator determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of an obligation by the Secretary or Administrator, the Secretary or Administrator shall make an immediate determination whether default should take place and whether further measures described in subsection (b) should be taken to protect the interests of the Secretary or Administrator while ensuring that program objectives are met.

(b) **CONTRACT PROVISIONS TO PROTECT SECRETARY OR ADMINISTRATOR.**—The Secretary or Administrator shall include provisions in a loan agreement with an obligor that provides additional authority to the Secretary or Administrator to take action to limit potential losses in connection with a defaulted loan or a loan that is in jeopardy due to the deteriorating financial condition of the obligor. If the Secretary or Administrator has waived a requirement under section 53707(d) of this title, the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet the waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1612; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), (b)(6), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(6), (10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53712(a)	46 App.:1274(k).	June 29, 1936, ch. 858, title XI, §1104A(k), (m), as added Pub. L. 108–136, title XXXV, §3523, Nov. 24, 2003, 117 Stat. 1800.

EDITORIAL NOTES**AMENDMENTS**

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D), (b)(6). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(6), (10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), (b)(6), into this section by inserting "or Administrator" after "Secretary" wherever appearing and substituting "If the Secretary or Administrator has waived a requirement under section 53707(d) of this title, the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet the waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement." for "These provisions include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligor's financial condition or the status of the vessel or shipyard project." See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), (b)(6), which directed the amendment of section 1274(k), (m) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53713. Administrative fees

(a) **IN GENERAL.**—The Secretary or Administrator shall charge and collect from the obligor fees the Secretary or Administrator considers reasonable for processing the application and monitoring the loan guarantee, including for—

- (1) investigating an application for a guarantee;
- (2) appraising property offered as security for a guarantee;
- (3) issuing a commitment;
- (4) providing services related to an escrow fund under section 53715 of this title or a deposit fund under section 53716 of this title;
- (5) inspecting property during construction, reconstruction, or reconditioning; and
- (6) monitoring and providing services related to the obligor's compliance with any terms related to the obligations, the guarantee, or maintenance of the Secretary or Administrator's security interests under this chapter.

(b) **TOTAL FEE LIMITATION.**—The total fees under subsection (a) may not exceed 0.5 percent of the original principal amount of the obligations to be guaranteed.

(c) **FEES FOR INDEPENDENT ANALYSIS.**—

(1) **IN GENERAL.**—The Secretary or Administrator may charge and collect fees to cover the costs of independent analysis under section 53703(c) of this title. Notwithstanding section 3302 of title 31, any fee collected under this subsection shall—

- (A) be credited as an offsetting collection to the account that finances the administration of the loan guarantee program;
- (B) be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and
- (C) remain available until expended.

(2) **FEE LIMITATION INAPPLICABLE.**—Fees collected under this subsection are not subject to the limitation of subsection (b).

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1612; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 116–92, div. C, title XXXV, §3506(h), Dec. 20, 2019, 133 Stat. 1973.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53713(a)	46 App.:1274(f)(1) (words before proviso).	June 29, 1936, ch. 858, title XI, §1104A(f)(1), (4) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §331, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 913; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 107–314, title XXXV, §3503(2), Dec. 2, 2002, 116 Stat. 2754; Pub. L. 108–136, title XXXV, §3526(2), Nov. 24, 2003, 117 Stat. 1801.
53713(b)	46 App.:1274(f)(1) (proviso).	
53713(c)	46 App.:1274(f)(4).	

EDITORIAL NOTES**AMENDMENTS**

2019—Subsec. (a). Pub. L. 116–92, §3506(h)(1)(A), substituted "reasonable for processing the application and monitoring the loan guarantee, including for—" for "reasonable for—" in introductory provisions.

Subsec. (a)(4). Pub. L. 116–92, §3506(h)(1)(B), substituted "or a deposit fund under section 53716 of this title;" for "; and".

Subsec. (a)(6). Pub. L. 116–92, §3506(h)(1)(C), (D), added par. (6).

Subsec. (c). Pub. L. 116–92, §3506(h)(2)(B)–(D), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1) and realigned margins, and added par. (2).

Pub. L. 116–92, §3506(h)(2)(A), which directed amendment of par. (1) of subsec. (c) by substituting "under section 53703(c) of this title" for "under section 53708(d) of this title", was executed by making the substitution in introductory provisions of subsec. (c) to reflect the probable intent of Congress and the subsequent designation of the provisions of subsec. (c) as subsec. (c)(1). See above.

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D). See 2006 Amendment note below.

Subsecs. (a), (c). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), into this section, by inserting "or Administrator" after "Secretary" wherever appearing in introductory provisions. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), which directed the amendment of section 1274(f) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsecs. (a), (c) and Historical and Revision notes above.

§53714. Guarantee fees

(a) **REGULATIONS.**—Subject to this section, the Secretary or Administrator shall prescribe regulations to assess a fee for guaranteeing an obligation under this chapter.

(b) **COMPUTATION OF FEE.**—

(1) **IN GENERAL.**—The amount of the fee for a guarantee under this chapter shall be equal to the sum of the amounts determined under paragraph (2) for the years in which the guarantee is in effect.

(2) **PRESENT VALUE FOR EACH YEAR.**—The amount referred to in paragraph (1) for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3). To determine the present value, the Secretary or Administrator shall apply a discount rate determined by the Secretary of the Treasury, considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) **CALCULATION OF AMOUNT.**—The amount referred to in paragraph (2) shall be calculated by multiplying—

(A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, other than interest, on deposit during the year in an escrow fund under section 53715 of this title); by

(B) the fee rate set under paragraph (4).

(4) **SETTING FEE RATES.**—To set the fee rate referred to in paragraph (3)(B), the Secretary or Administrator shall establish a formula that—

(A) takes into account the security provided for the guaranteed obligation; and

(B) is a sliding scale based on the creditworthiness of the obligor, using—

(i) the lowest allowable rate under paragraph (5) for the most creditworthy obligors; and

(ii) the highest allowable rate under paragraph (5) for the least creditworthy obligors.

(5) **PERMISSIBLE RANGE OF RATES.**—The fee rate set under paragraph (4) shall be—

(A) for a delivered vessel or equipment, at least 0.5 percent and not more than 1 percent; and

(B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least 0.25 percent and not more than 0.5 percent.

(c) **WHEN FEE COLLECTED.**—A fee for the guarantee of an obligation under this chapter shall be collected not later than the date on which an amount is first paid on the obligation.

(d) **FINANCING THE FEE.**—A fee paid under this section is eligible to be financed under this chapter and shall be included in the actual cost of the obligation guaranteed.

(e) **NOT REFUNDABLE.**—A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the obligation if the obligation is refinanced and guaranteed under this chapter after the refinancing.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1613; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(D), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53714(a)	46 App.:1274(e)(1).	June 29, 1936, ch. 858, title XI, §1104A(e) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 913; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(12), Oct. 30, 1984, 98 Stat. 3131; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 104–239, §13(c), Oct. 8, 1996, 110 Stat. 3136.
53714(b)	46 App.:1274(e)(2).	
53714(c)	46 App.:1274(e)(3).	
53714(d)	46 App.:1274(e)(5).	
53714(e)	46 App.:1274(e)(4).	

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(D). See 2006 Amendment note below.

Subsecs. (a), (b)(2), (4). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(D), into this section by inserting "or Administrator" after "Secretary", except the second place appearing in subsec. (b)(2). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(D), which directed the amendment of section 1274(e) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsecs. (a), (b)(2), (4) and Historical and Revision notes above.

§53715. Escrow fund

(a) **IN GENERAL.**—If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as security for a guarantee under this chapter, the Secretary or Administrator may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to—

(1) the excess of—

(A) the principal amount of all obligations whose proceeds are to be so used; over

(B) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel; plus

(2) any interest the Secretary or Administrator may require on the amount described in paragraph (1).

(b) **SECURITY INVOLVING BOTH UNCOMPLETED AND DELIVERED VESSELS.**—If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated for purposes of subsection (a) under regulations prescribed by the Secretary or Administrator.

(c) **DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.**—

(1) **PURPOSES.**—The Secretary or Administrator shall disburse amounts in the escrow fund, as specified in the escrow agreement, to—

(A) pay amounts the obligor is obligated to pay for—

(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and

(ii) interest on the obligations;

(B) redeem the obligations under a refinancing guaranteed under this chapter; and

(C) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(2) **MANNER OF PAYMENT.**—If a payment becomes due under the guarantee before the termination of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid into the appropriate account under section 53717 of this title. The amount shall be credited against amounts due or to become due from the obligor to the Secretary or Administrator on the guaranteed obligations or, to the extent not so required, be paid to the obligor.

(d) **PAYMENTS REQUIRED BEFORE DISBURSEMENT.**—

(1) **IN GENERAL.**—No disbursement shall be made under subsection (c) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary or Administrator. If the aggregate actual cost of the vessel has increased since the Secretary's or Administrator's initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (c) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, as applicable, of the increase, as determined by the Secretary or Administrator, in the aggregate actual cost of the vessel. This paragraph does not require the Secretary or Administrator to consent to finance any increase in actual cost unless the Secretary or Administrator determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

(2) **DOCUMENTED PROOF OF PROGRESS REQUIREMENT.**—The Secretary or Administrator shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The Secretary or Administrator may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

(e) **DISBURSEMENT ON TERMINATION OF AGREEMENT.**—

(1) **IN GENERAL.**—If a payment has not become due under the guarantee before the termination of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to—

(A) prepay the excess of—

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; over

(ii) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) **REMAINING BALANCE.**—Any remaining balance of the escrow fund shall be paid to the obligor.

(f) **INVESTMENT.**—The Secretary or Administrator may invest and reinvest any part of an escrow fund in obligations of the United States Government with maturities such that the escrow fund will be available as required for purposes of the escrow agreement. Investment income shall be paid to the obligor when received.

(g) **TERMS TO PROTECT GOVERNMENT.**—The escrow agreement shall contain other terms the Secretary or Administrator considers necessary to protect fully the interests of the Government.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1614; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53715(a)	46 App.:1279a(a) (less proviso).	June 29, 1936, ch. 858, title XI, §1108, formerly §1111, as added Pub. L. 86–127, §1(2), July 31, 1959, 73 Stat. 272; renumbered Pub. L. 92–507, §5, Oct. 19, 1972, 86 Stat. 916; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub.

		L. 108–136, title XXXV, §3521(a), Nov. 24, 2003, 117 Stat. 1799.
53715(b)	46 App.:1279a(a) (proviso).	
53715(c)	46 App.:1279a(b).	
53715(d)	46 App.:1279a(g).	
53715(e)	46 App.:1279a(c).	
53715(f)	46 App.:1279a(d), (e).	
53715(g)	46 App.:1279a(f).	

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(H), (3). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(H), (3), into this section by inserting "or Administrator" after "Secretary" wherever appearing and "or Administrator's" after "Secretary's" in subsec. (d)(1). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(H), (3), which directed the amendment of section 1279a of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53716. Deposit fund

(a) **IN GENERAL.**—There is a deposit fund in the Treasury for purposes of this section. The Secretary or Administrator, in accordance with an agreement under subsection (b), may deposit into and hold in the fund cash belonging to an obligor to serve as collateral for a guarantee made under this chapter with respect to the obligor.

(b) **AGREEMENT.**—The Secretary or Administrator and an obligor shall make a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the fund. The agreement shall contain—

- (1) terms and conditions required by this section;
- (2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and
- (3) any additional terms considered by the Secretary or Administrator to be necessary to protect fully the interests of the Government.

(c) **INVESTMENT.**—The Secretary or Administrator may invest and reinvest any part of the amounts in the fund in obligations of the Government with maturities such that amounts in the fund will be available as required for purposes of the agreement under subsection (b). Cash balances in the fund in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

(d) **WITHDRAWALS.**—

- (1) **IN GENERAL.**—Cash deposited into the fund may not be withdrawn without the consent of the Secretary or Administrator.
- (2) **USE OF INCOME.**—Subject to paragraph (3), the Secretary or Administrator may pay any income earned on cash of an obligor deposited into the fund in accordance with the agreement with the obligor under subsection (b).
- (3) **RETENTION AGAINST DEFAULT.**—The Secretary or Administrator may retain and offset any or all of the cash of an obligor in the fund, and any income realized thereon, as part of the Secretary's or Administrator's recovery against the obligor in case of a default by the obligor on an obligation.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1616; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53716	46 App.:1279b.	June 29, 1936, ch. 858, title XI, §1109, as added Pub. L. 107–107, title XXXV, §3503, Dec. 28, 2001, 115 Stat. 1392.

In subsection (a), the word "established" is omitted for consistency with other codified titles of the United States Code.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(H), (3). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(H), (3), into this section by inserting "or Administrator" after "Secretary" wherever appearing, except the second place appearing in subsec. (c), and inserting "or Administrator's" after "Secretary's" in subsec. (d)(3). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(H), (3), which directed the amendment of section 1279b of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53717. Management of funds in the Treasury

(a) **DEFINITION.**—In this section, the term "FCRA" means the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) **LOAN GUARANTEES BY ADMINISTRATOR.**—

(1) **WHEN NOT SUBJECT TO FCRA.**—The Administrator shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in an account in the Treasury entitled the Federal Ship Financing Fund Liquidating Account (a liquidating account as defined in FCRA).

(2) **WHEN SUBJECT TO FCRA.**—The Administrator shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury entitled the Federal Ship Financing Guaranteed Loan Financing Account (a financing account as defined in FCRA).

(c) **LOAN GUARANTEES BY SECRETARY.**—

(1) **WHEN NOT SUBJECT TO FCRA.**—The Secretary shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in a separate account in the Treasury established for this purpose.

(2) **WHEN SUBJECT TO FCRA.**—The Secretary shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury established for this purpose.

(d) **DIRECT LOANS BY SECRETARY.**—The Secretary shall account for payments and disbursements involving direct loans made under this chapter in a separate account in the Treasury established for this purpose.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1616; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(B), (D), (c)(2), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(7), (9)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES		
<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53717	46 App.:1272.	June 29, 1936, ch. 858, title XI, §1102, as added June 23, 1938, ch. 600, §46, 52 Stat. 969; Sept. 3, 1954, ch. 1265, §2, 68 Stat. 1268; Pub. L. 86–123, §1(2), July 31, 1959, 73 Stat. 269; Pub. L. 92–507, §2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166.
	46 App.:1274(g).	June 29, 1936, ch. 858, title XI, §1104A(g) [§1104A formerly §1104], as added June 23, 1938, ch. 600, §46, 52 Stat. 970; Aug. 4, 1939, ch. 417, §14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, §4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, §2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §4, 68 Stat. 1269; Pub. L. 86–123, §§1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, §1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§31, 32, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 96–561, title II, §220(3)(D), Dec. 22, 1980, 94 Stat. 3294; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, §1606(d), Aug. 13, 1981, 95 Stat. 752; §1104 renumbered as §1104A, Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.
	46 App.:1280.	Pub. L. 85–469, title I, §101 (par. under heading "Federal Ship Mortgage Insurance Fund"), June 25, 1958, 72 Stat. 231; Pub. L. 97–31, §12(137), Aug. 6, 1981, 95 Stat. 166.

The Federal Ship Financing Fund which had been created by 46 App. U.S.C. 1272 is obsolete as a result of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.). This section codifies the current requirements and practices for the management of funds under this chapter, based on the requirements of that Act.

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a), 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.

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(B), (D), (c)(2). See 2006 Amendment note below.

Subsec. (b). Pub. L. 110–181, §3522(a)(9)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(B), (D), (c)(2), into this section by substituting "Administrator" for "Secretary of Transportation" wherever appearing in heading and text. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsecs. (c), (d). Pub. L. 110–181, §3522(a)(7), struck out "of Commerce" after "Secretary" wherever appearing in headings and text.

2006—Pub. L. 109–163, §3507(a)(1)(B), (D), (c)(2), which directed the amendment of sections 1272, 1274(g), and 1280 of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsec. (b) and Historical and Revision notes above.

§53718. Annual report to Congress

The Administrator shall report to Congress annually on the loan guarantee program under this chapter. Each report shall include—

- (1) the size, in dollars, of the portfolio of loans guaranteed;
- (2) the size, in dollars, of projects in the portfolio facing financial difficulties;
- (3) the number and type of projects covered;
- (4) a profile of pending loan applications;
- (5) the amount of appropriations available for new guarantees;
- (6) a profile of each project approved since the last report; and
- (7) a profile of any defaults since the last report.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1617; Pub. L. 109–163, div. C, title XXXV, §3507(c)(3), Jan. 6, 2006, 119 Stat. 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(9)(C), (b), Jan. 28, 2008, 122 Stat. 598.)

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53718	46 App.:1280b.	Pub. L. 108–136, title XXXV, §3527, Nov. 24, 2003, 117 Stat. 1802.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(c)(3). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(9)(C), incorporated the substance of the amendment by Pub. L. 109–163, §3507(c)(3), into this section by substituting "Administrator" for "Secretary of Transportation" in introductory provisions. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(c)(3), which directed the amendment of section 1280b of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53719. Best practices

The Secretary or Administrator shall ensure that all standard documents and agreements that relate to loan guarantees made pursuant to this chapter are reviewed and updated every four years to ensure that such documents and agreements meet the current commercial best practices to the extent permitted by law.

(Added Pub. L. 116–92, div. C, title XXXV, §3506(i)(1), Dec. 20, 2019, 133 Stat. 1973.)

SUBCHAPTER II—DEFAULT PROVISIONS

§53721. Rights of obligee

(a) DEMANDS BY OBLIGEEES.—Except as provided in subsection (c), if an obligor has continued in default for 30 days in the payment of principal or interest on an obligation guaranteed under this chapter, the obligee or the obligee's agent may demand that the Secretary or Administrator pay the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. The demand must be made within the earlier of—

- (1) a period that may be specified in the guarantee or a related agreement; or
- (2) 90 days from the date of the default.

(b) PAYMENTS BY SECRETARY OR ADMINISTRATOR.—

(1) IN GENERAL.—If a demand is made under subsection (a), the Secretary or Administrator shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

- (A) a period that may be specified in the guarantee or a related agreement; or
- (B) 30 days from the date of the demand.

(2) IF NO EXISTING DEFAULT.—The Secretary or Administrator is not required to make payment under this subsection if, within the appropriate period under paragraph (1), the Secretary or Administrator finds that the obligor was not in default or that the default was remedied before the demand.

(c) ASSUMPTION OF RIGHTS AND OBLIGATIONS BEFORE DEMAND.—An obligee or the obligee's agent may not demand payment under this section if the Secretary or Administrator, before the demand and on terms that may be provided in the obligation or a related agreement, has assumed the obligor's rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary's or Administrator's assumption.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1617; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (F), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53721(a)	46 App.:1275(a) (1st sentence less parenthetical).	June 29, 1936, ch. 858, title XI, §1105(a), as added June 23, 1938, ch. 600, §46, 52 Stat. 971; Aug. 15, 1953, ch. 513, §3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, §1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, §33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(8), Oct. 30, 1984, 98 Stat. 3131.
53721(b)(1)	46 App.:1275(a) (last sentence less proviso).	
53721(b)(2)	46 App.:1275(a) (last sentence proviso).	
53721(c)	46 App.:1273(e) (last sentence).	June 29, 1936, ch. 858, title XI, §1103(e) (last sentence), as added Pub. L. 98–595, §1(1), Oct. 30, 1984, 98 Stat. 3130.
	46 App.:1275(a) (1st sentence parenthetical).	

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(C), (F). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(C), (F), into this section by inserting "or Administrator" after "Secretary" wherever appearing and "or Administrator's" after "Secretary's" in subsec. (c). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(C), (F), which directed the amendment of sections 1273(e) and 1275(a) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53722. Actions by Secretary or Administrator

(a) **GENERAL AUTHORITY.**—On default under an obligation or related agreement between the Secretary or Administrator and the obligor, the Secretary or Administrator, on terms that may be provided in the obligation or agreement, may—

- (1) assume the obligor's rights and duties under the obligation or agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the Secretary's or Administrator's assumption; or
- (2) notify the obligee or the obligee's agent of the default.

(b) **DEMANDS BY OBLIGEEES.**—

(1) **DEMAND.**—If the Secretary or Administrator proceeds under subsection (a)(2), the obligee or the obligee's agent may demand that the Secretary or Administrator pay the unpaid principal amount of the obligation and the unpaid interest on the obligation. The demand must be made within the earlier of—

- (A) a period that may be specified in the guarantee or a related agreement; or
- (B) 60 days from the date of the Secretary's or Administrator's notice.

(2) **PAYMENT.**—If a demand is made under paragraph (1), the Secretary or Administrator shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

- (A) a period that may be specified in the guarantee or a related agreement; or
- (B) 30 days from the date of the demand.

(c) **CONTINUED EFFECT OF GUARANTEE.**—A guarantee of an obligation remains in effect after an assumption of the obligation by the Secretary or Administrator.

(d) **ADDITIONAL RESPONSES.**—If there is a default on an obligation, the Secretary or Administrator shall conduct operations under this chapter in a manner that—

- (1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;
- (2) minimizes the amount of any loss realized in the resolution of the guarantee;
- (3) ensures adequate competition and fair and consistent treatment of offerors; and
- (4) requires appraisal of assets by an independent appraiser.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1618; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (F), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53722(a), (b)	46 App.:1275(b).	June 29, 1936, ch. 858, title XI, §1105(b), as added June 23, 1938, ch. 600, §46, 52 Stat. 971; Aug. 15, 1953, ch. 513, §3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, §1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, §33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(9), Oct. 30, 1984, 98 Stat. 3131.
53722(c)	46 App.:1273(e) (last sentence).	June 29, 1936, ch. 858, title XI, §1103(e) (last sentence), as added Pub. L. 98–595, §1(1), Oct. 30, 1984, 98 Stat. 3130.
53722(d)	46 App.:1275(f).	June 29, 1936, ch. 858, title XI, §1105(f), as added Pub. L. 108–136, title XXXV, §3524, Nov. 24, 2003, 117 Stat. 1801.

In subsection (a), before paragraph (1), the words "an obligation or related agreement" are substituted for "a mortgage, loan agreement, or other security agreement" for consistency in the revised chapter.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(C), (F). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(C), (F), into this section by inserting "or Administrator" after "Secretary" in section catchline and wherever appearing in subsecs. (a) to (c) and "or Administrator's" after "Secretary's" in subsecs. (a)(1) and (b)(1)(B). See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Subsec. (d). Pub. L. 110–181, §3522(a)(10)(B), inserted "or Administrator" after "Secretary" in introductory provisions.

2006—Pub. L. 109–163, §3507(a)(1)(C), (F), which directed the amendment of sections 1273(e) and 1275(b) of the former Appendix to this title from which this section was derived in part, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53723. Payments by Secretary or Administrator and issuance of obligations

(a) **CASH PAYMENT.**—Amounts required to be paid by the Secretary or Administrator under section 53721 or 53722 of this title shall be paid in cash.

(b) **ISSUANCE OF OBLIGATIONS.**—If amounts in the appropriate account under section 53717 of this title are not sufficient to make a payment required under section 53721 or 53722 of this title, the Secretary or Administrator may issue obligations to the Secretary of the Treasury. The Secretary or Administrator, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(c) **PURCHASE OF OBLIGATIONS.**—The Secretary of the Treasury shall purchase the obligations issued under this section. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the purchase of obligations under this subsection. The Secretary of the Treasury may sell obligations purchased under this section. A redemption, purchase, or sale of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

(d) **DEPOSITS AND REDEMPTIONS.**—The Secretary or Administrator shall deposit amounts borrowed under this section in the appropriate account under section 53717 of this title and make redemptions of the obligations from that account.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1618; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(G), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53723	46 App.:1275(d).	June 29, 1936, ch. 858, title XI, §1105(d), as added June 23, 1938, ch. 600, §46, 52 Stat. 972; Aug. 15, 1953, ch. 513, §3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, §1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, §33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 96–561, title II, §220(4), Dec. 22, 1980, 94 Stat. 3294; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, §1606(e), Aug. 13, 1981, 95 Stat. 752.

In subsections (b) and (d), the words "appropriate account under section 53717 of this title" are substituted for "Federal Ship Financing Fund" because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(G). See 2006 Amendment note below.

Subsecs. (a), (b), (d). Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(G), into this section by inserting "or Administrator" after "Secretary" in section catchline and wherever appearing in text, except when followed by "of the Treasury". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(G), which directed the amendment of section 1275(d) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsecs. (a), (b), (d) and Historical and Revision notes above.

§53724. Rights to secured property

(a) **ACQUISITION OF SECURITY RIGHTS.**—When the Secretary or Administrator makes a payment on, or assumes, an obligation under section 53721 or 53722 of this title, the Secretary or Administrator acquires the rights under the security agreement with the obligor in the security held by the Secretary or Administrator to guarantee the obligation.

(b) **USE AND DISPOSITION OF SECURED PROPERTY.**—Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States Government, the Secretary or Administrator has the right, in the Secretary's or Administrator's discretion, to complete, reconstruct, recondition, renovate, repair, maintain, operate, charter, or sell any property acquired under a security agreement with an obligor, or to place a vessel so acquired in the National Defense Reserve Fleet. The terms of a sale under this subsection shall be as approved by the Secretary or Administrator.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1619; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(F), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (11), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53724	46 App.:1275(c).	June 29, 1936, ch. 858, title XI, §1105(c), as added June 23, 1938, ch. 600, §46, 52 Stat. 971; Aug. 15, 1953, ch. 513, §3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, §1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, §33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(10), Oct. 30, 1984, 98 Stat. 3131.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(F). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), (11), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(F), into this section by inserting "or Administrator" after "Secretary" wherever appearing and, in subsec. (b), "or Administrator's" after "Secretary's". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(F), which directed the amendment of section 1275(c) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53725. Actions against obligor

(a) **IN GENERAL.**—For a default under a guaranteed obligation or related agreement, the Secretary or Administrator may take any action against the obligor or another liable party that the Secretary or Administrator considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the United States or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

(b) **TITLE, POSSESSION, AND PURCHASE.**—

(1) **IN GENERAL.**—The Secretary or Administrator may—

(A) accept a conveyance of title to and possession of property from the obligor or another party liable to the Secretary or Administrator; and

(B) purchase the property for an amount not greater than the unpaid principal amount of the obligation and interest thereon.

(2) **PAYMENT OF EXCESS.**—If, through the sale of property, the Secretary or Administrator receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the Secretary or Administrator shall pay the excess to the obligor.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1619; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(F), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53725	46 App.:1275(e).	June 29, 1936, ch. 858, title XI, §1105(e), as added June 23, 1938, ch. 600, §46, 52 Stat. 971; Aug. 15, 1953, ch. 513, §3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, §1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, §33, Oct. 21, 1970, 84 Stat. 1035; restated Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 915; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 98–595, §1(11), Oct. 30, 1984, 98 Stat. 3131.

In subsection (a), the words "may take any action" are substituted for "shall take such action . . . that, in his discretion, may be required" for clarity and to eliminate unnecessary words.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(F). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(F), into this section by inserting "or Administrator" after "Secretary" wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(F), which directed the amendment of section 1275(e) of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

SUBCHAPTER III—PARTICULAR PROJECTS

§53731. Commercial demonstration ocean thermal energy conversion facilities and plantships

(a) **IN GENERAL.**—Under subchapter I of this chapter, the Administrator may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) **APPLICABILITY OF OTHER PROVISIONS.**—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(c) **ECONOMIC SOUNDNESS.**—The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

(d) **REASONABLENESS OF RISK.**—A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the Administrator, certifies to the Administrator that, for the facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider—

(1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of the facility or plantship.

(e) **AMOUNT OF OBLIGATION.**—The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of—

(1) the actual cost or depreciated actual cost of the facility or plantship; or

(2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

(f) **OTEC DEMONSTRATION FUND.**—

- (1) IN GENERAL.—There is a special subaccount, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.
- (2) USE AND OPERATION.—The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However—
- (A) amounts received by the Administrator under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and
- (B) when obligations issued by the Administrator under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the Administrator under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.
- (3) TRANSFERS.—Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the Administrator under section 53723 of this title related to the OTEC Demonstration Fund.
- (4) LIABILITY.—The parent account is not liable for a guarantee or commitment to guarantee made under this section.
- (5) MAXIMUM UNPAID PRINCIPAL AMOUNT.—The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed \$1,650,000,000.
- (g) ISSUANCE AND PAYMENT OF OBLIGATIONS.—Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the Administrator under that section related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.
- (h) TAXATION OF INTEREST.—Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).
- (Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1620; Pub. L. 109–163, div. C, title XXXV, §3507(a)(2)(H), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(9)(D), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53731(a)	46 App.:1279c(a) (1st sentence), (1), (4).	June 29, 1936, ch. 858, title XI, §1110, as added Pub. L. 96–320, title II, §203(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, §1606(f), Aug. 13, 1981, 95 Stat. 752; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–239, §11(3), Oct. 8, 1996, 110 Stat. 3134.
53731(b)	46 App.:1279c(a) (2d sentence words before (1)).	
53731(c)	46 App.:1279c(a)(2).	
53731(d)	46 App.:1279c(b).	
53731(e)	46 App.:1279c(a)(3).	
53731(f)	46 App.:1279c(c).	
53731(g)	46 App.:1279c(d).	
53731(h)	46 App.:1279c(e).	

In subsection (a), the words "upon such terms as he shall prescribe" are omitted as unnecessary because section 53702(a) of the revised title provides the Secretary authority to prescribe the terms. The text of 46 App. U.S.C. 1279c(a)(1) is omitted as obsolete.

In subsection (f)(1), the words "account established under section 53717(b)(1) of this title" are substituted for "Federal Ship Financing Fund" because the accounts under section 53717 replace the Federal Ship Financing Fund. See the explanation for section 53717.

In subsection (f)(2)(B), the word "conversion" is substituted for "conversional" to correct an apparent error.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(2)(H). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(9)(D), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(2)(H), into this section by substituting "Administrator" for "Secretary" wherever appearing, except when followed by "of Energy". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(2)(H), which directed the amendment of section 1279c of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

[§53732. Repealed. Pub. L. 116–92, div. C, title XXXV, §3506(i)(2), Dec. 20, 2019, 133 Stat. 1974]

Section, Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1621; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (D), (2)(E), (F), (I), (J), (b)(3)(A), (5), (8), Jan. 6, 2006, 119 Stat. 3555, 3556; Pub. L. 110–181, div. C, title XXXV, §3522(a)(8), (9)(E), (b), Jan. 28, 2008, 122 Stat. 598, authorized the Administrator to guarantee an obligation for an eligible export vessel in accordance with certain laws and terms and established an interagency council.

§53733. Shipyard modernization and improvement

- (a) DEFINITIONS.—In this section:
- (1) ADVANCED SHIPBUILDING TECHNOLOGY.—The term "advanced shipbuilding technology" includes—
- (A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production that advance the state-of-the-art; and
- (B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.
- (2) GENERAL SHIPYARD FACILITY.—The term "general shipyard facility" means—
- (A) for operations on land—

- (i) a structure or appurtenance thereto designed for the construction, reconstruction, repair, rehabilitation, or refurbishment of a vessel, including a graving dock, building way, ship lift, wharf, or pier crane;
- (ii) the land necessary for the structure or appurtenance; and
- (iii) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in clause (i); and

(B) for operations not on land, a vessel, floating drydock, or barge built in the United States and used for, equipped to be used for, or of a type normally used for, performing a function referred to in subparagraph (A)(i).

(3) **MODERN SHIPBUILDING TECHNOLOGY.**—The term "modern shipbuilding technology" means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(b) **GENERAL AUTHORITY.**—Under subchapter I of this chapter, the Administrator may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility in the United States. Only a private shipyard is eligible to receive a guarantee.

(c) **APPLICABILITY OF OTHER PROVISIONS.**—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(d) **AMOUNT OF OBLIGATION.**—The principal amount of an obligation guaranteed under this chapter may not exceed 87.5 percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(e) **TRANSFER OF AMOUNTS.**—The Administrator may accept the transfer of amounts from a department, agency, or instrumentality of the United States Government and may use those amounts to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of making guarantees or commitments to guarantee under this section.

(f) **BUY AMERICA.**—Part I of subtitle A of title IX of division G of the Infrastructure Investment and Jobs Act (Public Law 117–58; 41 U.S.C. 8301 note) shall apply to any funds obligated by the Administrator under this section.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1623; Pub. L. 109–163, div. C, title XXXV, §3507(a)(2)(K), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(9)(F), (b), Jan. 28, 2008, 122 Stat. 598; Pub. L. 118–159, div. C, title XXXV, §3536, Dec. 23, 2024, 138 Stat. 2315.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53733(a)	46 App.:1279e(d).	June 29, 1936, ch. 858, title XI, §1112, as added Pub. L. 103–160, div. A, title XIII, §1357(a), Nov. 30, 1993, 107 Stat. 1814.
53733(b)	46 App.:1279e(a). 46 App.:1280a.	Pub. L. 103–160, title XIII, §1358, Nov. 30, 1993, 107 Stat. 1816.
53733(c)	46 App.:1279e(b) (words before "except").	
53733(d)	46 App.:1279e(b) (words beginning with "except").	
53733(e)	46 App.:1279e(c).	

In subsection (a)(2)(A)(i), the words "(as defined in title 1)" are omitted as unnecessary because chapter 1 of the revised title contains a title-wide definition of "vessel" that incorporates the definition in title 1, United States Code.

In subsection (b), the words "and subject to the terms the Secretary shall be prescribe" are omitted as unnecessary because section 53702(a) of the revised title provides the Secretary authority to prescribe the terms. The words "Only a private shipyard is eligible to receive a guarantee" are substituted for 46 App. U.S.C. 1280a to eliminate unnecessary words.

EDITORIAL NOTES

AMENDMENTS

2024—Subsec. (f). Pub. L. 118–159 added subsec. (f).

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(2)(K). See 2006 Amendment note below.

Subsecs. (b), (e). Pub. L. 110–181, §3522(a)(9)(F), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(2)(K), into this section by substituting "Administrator" for "Secretary". See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(2)(K), which directed the amendment of section 1279e of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment note for subsecs. (b), (e) and Historical and Revision notes above.

§53734. Replacement of vessels because of changes in operating standards

(a) **GENERAL AUTHORITY.**—Notwithstanding any other provision of this chapter, the Secretary or Administrator, on terms the Secretary or Administrator may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing or refinancing (including reimbursement of an obligor for expenditures previously made for) a contract for the construction or reconstruction of a vessel if—

(1) the vessel is designed and to be used for commercial use in coastwise, intercoastal, or foreign trade;

(2) the construction or reconstruction is necessary to replace a vessel that cannot continue to be operated because of a change required by law in the standards for the operation of vessels, and the applicant for the guarantee or commitment would not otherwise legally be able to continue operating vessels in the trades in which the applicant operated vessels before the change;

(3) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by the change in operating standards;

(4) the capacity of the vessels to be constructed or reconstructed under this section will not increase the cargo carrying capacity of the vessels being replaced;

(5) the Secretary or Administrator has not determined that the market demand for the vessel over its useful life will diminish so as to make granting the guarantee fiduciarily imprudent;

(6) the vessel, if to be reconstructed, will have a useful life of at least 15 years after the reconstruction; and

(7) the Secretary or Administrator has considered the criteria specified in section 53708(a)(3)–(5) of this title.

(b) **TERM AND AMOUNT OF OBLIGATION.**—

(1) **TERM.**—The term of an obligation guaranteed under this section may not exceed 25 years.

(2) AMOUNT.—The amount of an obligation guaranteed under this section may not exceed 87.5 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel. The Secretary or Administrator may not establish a percentage under this paragraph that is to be applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) APPLICABILITY OF OTHER PROVISIONS.—A guarantee or commitment to guarantee under this section is also subject to sections 53701, 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a), 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and 53721–53725 of this title.

(d) SECURITY AGAINST DEFAULT.—The Secretary or Administrator shall require by regulation that an applicant under this section provide adequate security against default.

(e) GUARANTEE FEES.—The Secretary or Administrator may establish a fee for the guarantee of an obligation under this section that is in addition to the fee established under section 53714 of this title. The fee may be—

(1) an annual fee of not more than an additional 1 percent added to the fee established under section 53714 of this title; or

(2) a fee based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1624; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(E), Jan. 6, 2006, 119 Stat. 3555; Pub. L. 110–181, div. C, title XXXV, §3522(a)(10)(B), (b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53734(a)	46 App.:1274a(a), (b)(3).	June 29, 1936, ch. 858, title XI, §1104B, as added Pub. L. 101–380, title IV, §4115(f) (2), Aug. 18, 1990, 104 Stat. 521; amended Pub. L. 102–587, title VI, §6204, Nov. 4, 1992, 106 Stat. 5094; Pub. L. 103–160, div. A, title XIII, §1356(4), Nov. 30, 1993, 107 Stat. 1814; Pub. L. 104–239, §11(2), Oct. 8, 1996, 110 Stat. 3134.
53734(b)	46 App.:1274a(b) (less (3)).	
53734(c)	46 App.:1274a(d).	
53734(d)	46 App.:1274a(c)(1) (1st sentence).	
53734(e)	46 App.:1274a(c)(1) (2d sentence), (2).	

In subsection (a), in paragraph (1), the words "as defined in section 1244 of this Appendix" are omitted because the definition of "foreign commerce or trade" in chapter 1 of the revised title applies without having to say so specifically. Paragraph (6) is substituted for 46 App. U.S.C. 1274a(b)(3) to improve the organization of the source provisions.

In subsection (b)(2), the words "by rule, regulation, or procedure" are omitted as unnecessary and for consistency with section 53709(d) of the revised title.

In subsections (c) and (e), the language concerning the Vessel Replacement Guarantee Fund and the Federal Ship Financing Fund is omitted as obsolete. See the explanation for section 53717.

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–181, §3522(b), repealed Pub. L. 109–163, §3507(a)(1)(E). See 2006 Amendment note below.

Pub. L. 110–181, §3522(a)(10)(B), incorporated the substance of the amendment by Pub. L. 109–163, §3507(a)(1)(E), into this section by inserting "or Administrator" after "Secretary" wherever appearing. See 2006 Amendment note below and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

2006—Pub. L. 109–163, §3507(a)(1)(E), which directed the amendment of section 1274a of the former Appendix to this title from which this section was derived, was repealed by Pub. L. 110–181, §3522(b). See 2008 Amendment notes and Historical and Revision notes above.

§53735. Fisheries financing and capacity reduction

(a) DEFINITION.—In this section, the term "program" means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a).

(b) GUARANTEE AUTHORITY.—The Secretary may guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to conditions the Secretary considers necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(c) REQUIREMENTS OF OBLIGATIONS.—A debt obligation guaranteed under this section shall—

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this chapter, except with respect to provisions of this chapter that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to the second sentence of subsection (d)(2)) and as the exclusive payment security, the fishing fees established under the program; and

(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

(d) FISHING CAPACITY REDUCTION FUND.—

(1) IN GENERAL.—There is a separate account in the Treasury, known as the Fishing Capacity Reduction Fund. Within the Fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section. Funds available for this purpose from other amounts available for the program may also be used to pay those debt obligations.

(3) INVESTMENT.—Amounts in the Fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States Government.

(e) REGULATIONS.—The Secretary shall prescribe regulations the Secretary considers necessary to carry out this section.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1625; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(H), (d), Jan. 6, 2006, 119 Stat. 3555, 3557; Pub. L. 110–181, div. C, title XXXV, §3522(b), Jan. 28, 2008, 122 Stat. 598.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
53735(a)	46 App.:1279f(e).	June 29, 1936, ch. 858, title XI, §1111, as added Pub. L. 104–297, title III, §303, Oct. 11, 1996, 110 Stat. 3616; Pub. L. 104–208, title I, §101 [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009–41.
53735(b)	46 App.:1279f(a).	
53735(c)	46 App.:1279f(b).	
53735(d)	46 App.:1279f(c).	
53735(e)	46 App.:1279f(d).	

EDITORIAL NOTES

CODIFICATION

This section was derived from section 1111 of act June 29, 1936, as added by Pub. L. 104–297, §303, which was classified to section 1279f of the former Appendix to this title. Section 1111 was renumbered section 1113 of the Act by Pub. L. 109–163, div. C, title XXXV, §3507(d), Jan. 6, 2006, 119 Stat. 3557, which was repealed by Pub. L. 110–181, div. C, title XXXV, §3522(b), Jan. 28, 2008, 122 Stat. 598. See Historical and Revision notes above and section 18(a) of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

AMENDMENTS

2008—Pub. L. 110–181 repealed Pub. L. 109–163, §3507(a)(1)(H), (d). See 2006 Amendment note below and Codification note above.

2006—Pub. L. 109–163, §3507(a)(1)(H), which directed the amendment of section 1279f of the former Appendix to this title from which this section was derived by substituting "Secretary or Administrator" for "Secretary" wherever appearing, was repealed by Pub. L. 110–181, §3522(b). See Historical and Revision notes above.