

and” for “fiscal years 2005 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4), and 144; and”.

Subsec. (d)(1)(B), Pub. L. 114-94, §1446(d)(5)(B), amended Pub. L. 112-141, div. A, title I, §1519(c). See 2012 Amendment note below.

Subsec. (d)(2), (3), Pub. L. 114-94, §2001(i)(2)(B), (C), substituted “fiscal years 2016 through 2020” for “fiscal years 2005 through 2009”.

Subsec. (d)(4) to (7), Pub. L. 114-94, §2001(i)(2)(D)–(F), added par. (4), redesignated former pars. (4) to (6) as (5) to (7), respectively, and substituted “section 133(d)(1)(A)(i)” for “section 133(d)(3)” in par. (6).

Subsec. (e), Pub. L. 114-94, §2001(i)(3), added subsec. (e) and struck out former subsec. (e) which related to forms of assistance from infrastructure banks.

Subsec. (g)(1), Pub. L. 114-94, §2001(i)(4)(A), substituted “the highway account, the transit account, and the rail account” for “each account”.

Subsec. (g)(4), Pub. L. 114-94, §2001(i)(4)(B), inserted “, except that any loan funded from the rural projects fund of the bank shall bear interest at or below the interest rate charged for the TIFIA loan provided to the bank under section 603” after “feasible”.

Subsec. (k), Pub. L. 114-94, §2001(i)(5), substituted “fiscal years 2016 through 2020” for “fiscal years 2005 through 2009”.

2012—Subsec. (d)(1)(B), Pub. L. 112-141, §1519(c)(11), formerly §1519(c)(12), as renumbered by Pub. L. 114-94, §1446(d)(5)(B), struck out “under section 105” before period at end.

2008—Pub. L. 110-244 amended Pub. L. 109-59, §1602(d). See 2005 Amendment note below.

2005—Pub. L. 109-59, as amended by Pub. L. 110-244, renumbered section 190 of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117-58, set out as a note under section 101 of this title.

##### EFFECTIVE DATE OF 2015 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

Pub. L. 114-94, div. A, title I, §1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(5)(B) is effective as of July 6, 2012, and as if included in Pub. L. 112-141 as enacted.

##### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-244 effective as of the date of enactment of Pub. L. 109-59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109-59 as of that date, and provisions of Pub. L. 109-59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110-244 to be treated as not enacted, see section 121(b) of Pub. L. 110-244, set out as a note under section 101 of this title.

#### § 611. Asset concessions and innovative finance assistance

(a) DEFINITIONS.—In this section:

(1) APPROVED INFRASTRUCTURE ASSET.—The term “approved infrastructure asset” means—

(A) a project (as defined in section 601(a)); and

(B) a group of projects (as defined in section 601(a)) considered together in a single

asset concession or long-term lease to a concessionaire by 1 or more eligible entities.

(2) ASSET CONCESSION.—The term “asset concession” means a contract between an eligible entity and a concessionaire—

(A) under which—

(i) the eligible entity agrees to enter into a concession agreement or long-term lease with the concessionaire relating to an approved infrastructure asset owned, controlled, or maintained by the eligible entity;

(ii) as consideration for the agreement or lease described in clause (i), the concessionaire agrees—

(I) to provide to the eligible entity 1 or more asset concession payments; and

(II) to maintain or exceed the condition, performance, and service level of the approved infrastructure asset, as compared to that condition, performance, and service level on the date of execution of the agreement or lease; and

(iii) the eligible entity and the concessionaire agree that the costs for a fiscal year of the agreement or lease, and any project carried out under the agreement or lease, shall not be shifted to any taxpayer the annual household income of whom is less than \$400,000 per year, including through taxes, user fees, tolls, or any other measure, for use of an approved infrastructure asset; and

(B) the terms of which do not include any noncompete or exclusivity restriction (or any other, similar restriction) on the approval of another project.

(3) ASSET CONCESSION PAYMENT.—The term “asset concession payment” means a payment that—

(A) is made by a concessionaire to an eligible entity for fair market value that is determined as part of the asset concession; and

(B) may be—

(i) a payment made at the financial close of an asset concession; or

(ii) a series of payments scheduled to be made for—

(I) a fixed period; or

(II) the term of an asset concession.

(4) CONCESSIONAIRE.—The term “concessionaire” means a private individual or a private or publicly chartered corporation or entity that enters into an asset concession with an eligible entity.

(5) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term “eligible entity” means an entity described in subparagraph (B) that—

(i) owns, controls, or maintains an approved infrastructure asset; and

(ii) has the legal authority to enter into a contract to transfer ownership, maintenance, operations, revenues, or other benefits and responsibilities for an approved infrastructure asset.

(B) ENTITIES DESCRIBED.—An entity referred to in subparagraph (A) is any of the following:

- (i) A State.
- (ii) A Tribal government.
- (iii) A unit of local government.
- (iv) An agency or instrumentality of a State, Tribal government, or unit of local government.
- (v) A special purpose district or public authority.

(b) ESTABLISHMENT.—The Secretary shall establish a program to facilitate access to expert services for, and to provide grants to, eligible entities to enhance the technical capacity of eligible entities to facilitate and evaluate public-private partnerships in which the private sector partner could assume a greater role in project planning, development, financing, construction, maintenance, and operation, including by assisting eligible entities in entering into asset concessions.

(c) APPLICATIONS.—To be eligible to receive a grant under this section, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(d) ELIGIBLE ACTIVITIES.—

(1) TECHNICAL ASSISTANCE GRANTS.—An eligible entity may use amounts made available from a grant under this section for technical assistance to build the organizational capacity of the eligible entity to develop, review, or enter into an asset concession, including for—

(A) identifying appropriate assets or projects for asset concessions;

(B) soliciting and negotiating asset concessions, including hiring staff in public agencies;

(C) conducting a value-for-money analysis, or a comparable analysis, to evaluate the comparative benefits of asset concessions and public debt or other procurement methods;

(D) evaluating options for the structure and use of asset concession payments;

(E) evaluating and publicly presenting the risks and benefits of all contract provisions for the purpose of transparency and accountability;

(F) identifying best practices to protect the public interest and priorities;

(G) identifying best practices for managing transportation demand and mobility along a corridor, including through provisions of the asset concession, to facilitate transportation demand management strategies along the corridor that is subject to the asset concession; and

(H) integrating and coordinating pricing, data, and fare collection with other regional operators that exist or may be developed.

(2) EXPERT SERVICES.—An eligible entity seeking to leverage public and private funding in connection with the development of an early-stage approved infrastructure asset, including in the development of alternative approaches to project delivery or procurement, may use amounts made available from a grant under this section to retain the services of an expert firm to provide to the eligible entity direct project level assistance, which services may include—

(A) project planning, feasibility studies, revenue forecasting, economic assessments and cost-benefit analyses, public benefit studies, value-for-money analyses, business case development, lifecycle cost analyses, risk assessment, financing and funding options analyses, procurement alternatives analyses, statutory and regulatory framework analyses and other pre-procurement and pre-construction activities;

(B) financial and legal planning (including the identification of statutory authorization, funding, and financing options);

(C) early assessment of permitting, environmental review, and regulatory processes and costs; and

(D) assistance with entering into an asset concession.

(e) DISTRIBUTION.—

(1) MAXIMUM AMOUNT.—

(A) TECHNICAL ASSISTANCE GRANTS.—The maximum amount of a technical assistance grant under subsection (d)(1) shall be \$2,000,000.

(B) EXPERT SERVICES.—The maximum amount of the value of expert services retained by an eligible entity under subsection (d)(2) shall be \$2,000,000.

(2) COST SHARING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Federal share of the cost of an activity carried out under this section may be up to 100 percent.

(B) CERTAIN PROJECTS.—If the amount of the grant provided to an eligible entity under this section is more than \$1,000,000, the Federal share of the cost of an activity carried out using grant amounts in excess of \$1,000,000 shall be 50 percent.

(3) STATEWIDE MAXIMUM.—The aggregate amount made available under this section to eligible entities within a State shall not exceed, on a cumulative basis for all eligible entities within the State during any 3-year period, \$4,000,000.

(f) REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall ensure that, as a condition of receiving a grant under this section, for any asset concession for which the grant provides direct assistance—

(A) the asset concession shall not prohibit, discourage, or make it more difficult for an eligible entity to construct new infrastructure, to provide or expand transportation services, or to manage associated infrastructure in publicly beneficial ways, along a transportation corridor or in the proximity of a transportation facility that was a part of the asset concession;

(B) the eligible entity shall have adopted binding rules to publish all major business terms of the proposed asset concession not later than the date that is 30 days before entering into the asset concession, to enable public review, including a certification of public interest based on the results of an assessment under subparagraph (D);

(C) the asset concession shall not result in displacement, job loss, or wage reduction for

the existing workforce of the eligible entity or other public entities;

(D) the eligible entity or the concessionaire shall carry out a value-for-money analysis, or similar assessment, to compare the aggregate costs and benefits to the eligible entity of the asset concession against alternative options to determine whether the asset concession generates additional public benefits and serves the public interest;

(E) the full amount of any asset concession payment received by the eligible entity under the asset concession, less any amount paid for transaction costs relating to the asset concession, shall be used to pay infrastructure costs of the eligible entity; and

(F) the terms of the asset concession shall not result in any increase in costs under the asset concession being shifted to taxpayers the annual household income of whom is less than \$400,000 per year, including through taxes, user fees, tolls, or any other measure, for use of an approved infrastructure asset.

(2) AUDIT.—Not later than 3 years after the date on which an eligible entity enters into an asset concession as a result of a grant under this section—

(A) the eligible entity shall hire an independent auditor to evaluate the performance of the concessionaire based on the requirements described in paragraph (1); and

(B) the independent auditor shall submit to the eligible entity, and make publicly available, a report describing the results of the audit under subparagraph (A).

(3) TREATMENT.—Unless otherwise provided under paragraph (1), the Secretary shall not, as a condition of receiving a grant under this section, prohibit or otherwise prevent an eligible entity from entering into, or receiving any asset concession payment under, an asset concession for an approved infrastructure asset owned, controlled, or maintained by the eligible entity.

(4) APPLICABILITY OF FEDERAL LAWS.—Nothing in this section exempts a concessionaire or an eligible entity from a compliance obligation with respect to any applicable Federal or State law that would otherwise apply to the concessionaire, the eligible entity, or an approved infrastructure asset.

(g) FUNDING.—

(1) IN GENERAL.—On October 1, 2021, and on each October 1 thereafter through October 1, 2025, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section \$20,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

(Added Pub. L. 117-58, div. G, title X, §71001(a)(1), Nov. 15, 2021, 135 Stat. 1316.)