

issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

**(14) Secured loan**

The term “secured loan” means a direct loan to an obligor or a debt obligation issued by an obligor and purchased by the Secretary, in each case funded by the Secretary in connection with the financing of a project under section 16373 of this title.

**(15) Subsidy amount**

The term “subsidy amount” means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument—

- (A) calculated on a net present value basis; and
- (B) excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

**(16) Substantial completion**

The term “substantial completion”, with respect to a project, means the date—

- (A) on which the project commences transportation of carbon dioxide; or
- (B) of a comparable event to the event described in subparagraph (A), as determined by the Secretary and specified in the project credit agreement.

(Pub. L. 109–58, title IX, §999A, as added Pub. L. 117–58, div. D, title III, §40304(a), Nov. 15, 2021, 135 Stat. 988.)

**Editorial Notes**

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (6), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Federal Credit Reform Act of 1990, referred to in par. (15)(B), 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.

PRIOR PROVISIONS

A prior section 16371, Pub. L. 109–58, title IX, §999A, Aug. 8, 2005, 119 Stat. 916, authorized the Secretary of Energy to carry out a program of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resources, prior to repeal by Pub. L. 113–67, div. A, title III, §301(a), Dec. 26, 2013, 127 Stat. 1181.

**Statutory Notes and Related Subsidiaries**

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117–58, including authority of Secretary of Labor, see section 18851 of this title.

**§ 16372. Determination of eligibility and project selection**

**(a) Establishment of program**

The Secretary shall establish and carry out a carbon dioxide transportation infrastructure finance and innovation program, under which the Secretary shall provide for eligible projects in accordance with this part—

- (1) a Federal credit instrument under section 16373 of this title;
  - (2) a grant under section 16374 of this title;
- or
- (3) both a Federal credit instrument and a grant.

**(b) Eligibility**

**(1) In general**

A project shall be eligible to receive a Federal credit instrument or a grant under the CIFIA program if—

- (A) the entity proposing to carry out the project submits a letter of interest prior to submission of an application under paragraph (3) for the project; and
- (B) the project meets the criteria described in this subsection.

**(2) Creditworthiness**

**(A) In general**

Each project and obligor that receives a Federal credit instrument or a grant under the CIFIA program shall be creditworthy, such that there exists a reasonable prospect of repayment of the principal and interest on the Federal credit instrument, as determined by the Secretary under subparagraph (B).

**(B) Reasonable prospect of repayment**

The Secretary shall base a determination of whether there is a reasonable prospect of repayment under subparagraph (A) on a comprehensive evaluation of whether the obligor has a reasonable prospect of repaying the Federal credit instrument for the eligible project, including evaluation of—

- (i) the strength of the contractual terms of an eligible project (if available for the applicable market segment);
- (ii) the forecast of noncontractual cash flows supported by market projections from reputable sources, as determined by the Secretary, and cash sweeps or other structural enhancements;
- (iii) the projected financial strength of the obligor—

- (I) at the time of loan close; and
- (II) throughout the loan term, including after the project is completed;

(iv) the financial strength of the investors and strategic partners of the obligor, if applicable; and

(v) other financial metrics and analyses that are relied on by the private lending community and nationally recognized credit rating agencies, as determined appropriate by the Secretary.

**(3) Applications**

To be eligible for assistance under the CIFIA program, an obligor shall submit to the Sec-

retary a project application at such time, in such manner, and containing such information as the Secretary determines to be appropriate.

**(4) Eligible project costs**

A project under the CIFIA program shall have eligible project costs that are reasonably anticipated to equal or exceed \$100,000,000.

**(5) Revenue sources**

The applicable Federal credit instrument shall be repayable, in whole or in part, from—

- (A) user fees;
- (B) payments owing to the obligor under a public-private partnership; or
- (C) other revenue sources that also secure or fund the project obligations.

**(6) Obligor will be identified later**

A State, local government, agency, or instrumentality of a State or local government, or a public authority, may submit to the Secretary an application under paragraph (3), under which a private party to a public-private partnership will be—

- (A) the obligor; and
- (B) identified at a later date through completion of a procurement and selection of the private party.

**(7) Beneficial effects**

The Secretary shall determine that financial assistance for each project under the CIFIA program will—

- (A) attract public or private investment for the project; or
- (B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project.

**(8) Project readiness**

To be eligible for assistance under the CIFIA program, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument or grant is obligated for the project under the CIFIA program.

**(c) Selection among eligible projects**

**(1) Establishment of application process**

The Secretary shall establish an application process under which projects that are eligible to receive assistance under subsection (b) may—

- (A) receive credit assistance on terms acceptable to the Secretary, if adequate funds are available (including any funds provided on behalf of an eligible project under paragraph (3)(B)(ii)) to cover the subsidy amount associated with the Federal credit instrument; and
- (B) receive grants under section 16374 of this title if—
  - (i) adequate funds are available to cover the amount of the grant; and
  - (ii) the Secretary determines that the project is eligible under subsection (b).

**(2) Priority**

In selecting projects to receive credit assistance under subsection (b), the Secretary shall give priority to projects that—

(A) are large-capacity, common carrier infrastructure;

(B) have demonstrated demand for use of the infrastructure by associated projects that capture carbon dioxide from anthropogenic sources or ambient air;

(C) enable geographical diversity in associated projects that capture carbon dioxide from anthropogenic sources or ambient air, with the goal of enabling projects in all major carbon dioxide-emitting regions of the United States; and

(D) are sited within, or adjacent to, existing pipeline or other linear infrastructure corridors, in a manner that minimizes environmental disturbance and other siting concerns.

**(3) Master credit agreements**

**(A) Priority projects**

The Secretary may enter into a master credit agreement for a project that the Secretary determines—

(i) will likely be eligible for credit assistance under subsection (b), on obtaining—

- (I) additional commitments from associated carbon capture projects to use the project; or
- (II) all necessary permits and approvals; and

(ii) is a project of high priority, as determined in accordance with the criteria described in paragraph (2).

**(B) Adequate funding not available**

If the Secretary fully obligates funding to eligible projects for a fiscal year and adequate funding is not available to fund a Federal credit instrument, a project sponsor (including a unit of State or local government) of an eligible project may elect—

(i)(I) to enter into a master credit agreement in lieu of the Federal credit instrument; and

(II) to wait to execute a Federal credit instrument until the fiscal year for which additional funds are available to receive credit assistance; or

(ii) if the lack of adequate funding is solely with respect to amounts available for the subsidy amount, to pay the subsidy amount to fund the Federal credit instrument.

**(d) Federal requirements**

**(1) In general**

Nothing in this part supersedes the applicability of any other requirement under Federal law (including regulations).

**(2) NEPA**

Federal credit assistance may only be provided under this part for a project that has received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**(e) Use of American iron, steel, and manufactured goods**

**(1) In general**

Except as provided in paragraph (2), no Federal credit instrument or grant provided under

the CIFIA program shall be made available for a project unless all iron, steel, and manufactured goods used in the project are produced in the United States.

**(2) Exceptions**

Paragraph (1) shall not apply in any case or category of cases with respect to which the Secretary determines that—

(A) the application would be inconsistent with the public interest;

(B) iron, steel, or a relevant manufactured good is not produced in the United States in sufficient and reasonably available quantity, or of a satisfactory quality; or

(C) the inclusion of iron, steel, or a manufactured good produced in the United States will increase the cost of the overall project by more than 25 percent.

**(3) Waivers**

If the Secretary receives a request for a waiver under this subsection, the Secretary shall—

(A) make available to the public a copy of the request, together with any information available to the Secretary concerning the request—

(i) on an informal basis; and

(ii) by electronic means, including on the official public website of the Department;

(B) allow for informal public comment relating to the request for not fewer than 15 days before making a determination with respect to the request; and

(C) approve or disapprove the request by not later than the date that is 120 days after the date of receipt of the request.

**(4) Applicability**

This subsection shall be applied in accordance with any applicable obligations of the United States under international agreements.

**(f) Application processing procedures**

**(1) Notice of complete application**

Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice describing whether—

(A) the application is complete; or

(B) additional information or materials are needed to complete the application.

**(2) Approval or denial of application**

Not later than 60 days after the date of issuance of a written notice under paragraph (1), the Secretary shall provide to the applicant a written notice informing the applicant whether the Secretary has approved or disapproved the application.

**(g) Development-phase activities**

Any Federal credit instrument provided under the CIFIA program may be used to finance up to 100 percent of the cost of development-phase activities, as described in section 16371(4)(A) of this title.

(Pub. L. 109–58, title IX, §999B, as added Pub. L. 117–58, div. D, title III, §40304(a), Nov. 15, 2021, 135 Stat. 991.)

**Editorial Notes**

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 16372, Pub. L. 109–58, title IX, §999B, Aug. 8, 2005, 119 Stat. 917, related to administration of the program under former part J, prior to repeal by Pub. L. 113–67, div. A, title III, §301(a), Dec. 26, 2013, 127 Stat. 1181.

**Statutory Notes and Related Subsidiaries**

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117–58, including authority of Secretary of Labor, see section 18851 of this title.

**§ 16373. Secured loans**

**(a) Agreements**

**(1) In general**

Subject to paragraph (2), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which—

(A) shall be used—

(i) to finance eligible project costs of any project selected under section 16372 of this title;

(ii) to refinance interim construction financing of eligible project costs of any project selected under section 16372 of this title; or

(iii) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(I) is selected under section 16372 of this title; or

(II) otherwise meets the requirements of that section; and

(B) may be used in accordance with subsection (b)(7) to pay any fees collected by the Secretary under subparagraph (B) of that subsection.

**(2) Risk assessment**

Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate credit subsidy amount for each secured loan, taking into account all relevant factors, including the creditworthiness factors under section 16372(b)(2) of this title.

**(b) Terms and limitations**

**(1) In general**

A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.