

sibility study carried out under this section shall not exceed 50 percent of the study costs.

(2) Form

The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

(3) Financial hardship

The Secretary may increase the Federal share of the costs of a feasibility study if the Secretary determines, based on a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of the study.

(4) Larger communities

In conducting a feasibility study of a rural water supply system that includes a community with a population in excess of 50,000 inhabitants, the Secretary may require the non-Federal project entity to pay more than 50 percent of the costs of the study.

(h) Consultation and cooperation

In addition to the non-Federal project entity, the Secretary shall consult and cooperate with appropriate Federal, State, tribal, regional, and local authorities during the conduct of each feasibility assessment and development of the feasibility report conducted under this subchapter.

(Pub. L. 109-451, title I, §106, Dec. 22, 2006, 120 Stat. 3351.)

§ 2406. Miscellaneous

(a) Authority of Secretary

The Secretary may enter into contracts, financial assistance agreements, and such other agreements, and promulgate such regulations, as are necessary to carry out this subchapter.

(b) Transfer of projects

Nothing in this subchapter authorizes the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership or from private to Federal ownership.

(c) Federal reclamation law

Nothing in this subchapter supersedes or amends any Federal law associated with a project, or portion of a project, constructed under Federal reclamation law.

(d) Interagency coordination

The Secretary shall coordinate the Program carried out under this subchapter with existing Federal and State rural water and wastewater programs to facilitate the most efficient and effective solution to meeting the water needs of the non-Federal project sponsors.

(e) Multiple Indian tribes

In any case in which a contract is entered into with, or a grant is made, to¹ an organization to perform services benefitting more than 1 Indian tribe under this subchapter, the approval of each

such Indian tribe shall be a prerequisite to entering into the contract or making the grant.

(f) Ownership of facilities

Title to any facility planned, designed, and recommended for construction under this subchapter shall be held by the non-Federal project entity.

(g) Expedited procedures

If the Secretary determines that a community to be served by a proposed rural water supply project has urgent and compelling water needs, the Secretary shall, to the maximum extent practicable, expedite appraisal investigations and reports conducted under section 2404 of this title and feasibility studies and reports conducted under section 2405 of this title.

(h) Effect on State water law

(1) In general

Nothing in this subchapter preempts or affects State water law or an interstate compact governing water.

(2) Compliance required

The Secretary shall comply with State water laws in carrying out this subchapter.

(i) No additional requirements

Nothing in this subchapter requires a feasibility study for, or imposes any other additional requirements with respect to, rural water supply projects or programs that are authorized before December 22, 2006.

(Pub. L. 109-451, title I, §107, Dec. 22, 2006, 120 Stat. 3355.)

§ 2407. Reports

Beginning in fiscal year 2007, and each fiscal year thereafter through fiscal year 2012, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report that describes the number and type of full-time equivalent positions in the Department of the Interior and the amount of overhead costs of the Department of the Interior that are allocated to carrying out this subchapter for the applicable fiscal year.

(Pub. L. 109-451, title I, §108, Dec. 22, 2006, 120 Stat. 3356.)

§ 2408. Authorization of appropriations

(a) In general

There is authorized to be appropriated to carry out this subchapter \$15,000,000 for each of fiscal years 2007 through 2016, to remain available until expended.

(b) Rural water programs assessment

Of the amounts made available under subsection (a), not more than \$1,000,000 may be made available to carry out section 2403 of this title for each of fiscal years 2007 and 2008.

(c) Construction costs

No amounts made available under this section shall be used to pay construction costs associated with any rural water supply project.

(Pub. L. 109-451, title I, §109, Dec. 22, 2006, 120 Stat. 3356.)

¹ So in original. The comma probably should follow "to".

§ 2409. Termination of authority

The authority of the Secretary to carry out this subchapter terminates on September 30, 2016.

(Pub. L. 109-451, title I, §110, Dec. 22, 2006, 120 Stat. 3356.)

SUBCHAPTER II—TWENTY-FIRST CENTURY
WATER WORKS

§ 2421. Definitions

In this subchapter:

(1) Indian tribe

The term “Indian tribe” has the meaning given the term in section 5304 of title 25.

(2) Lender

The term “lender” means—

(A) a non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulation¹ (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.); or

(B) a clean renewable energy bond lender (as defined in section 54(j)(2)² of title 26 (as in effect on December 22, 2006)).

(3) Loan guarantee

The term “loan guarantee” has the meaning given the term “loan guarantee” in section 661a of title 2.

(4) Non-Federal borrower

The term “non-Federal borrower” means—

(A) a State (including a department, agency, or political subdivision of a State); or

(B) a conservancy district, irrigation district, canal company, water users’ association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States under Federal reclamation law.

(5) Obligation

The term “obligation” means a loan or other debt obligation that is guaranteed under this section.

(6) Project

The term “project” means—

(A) a rural water supply project (as defined in section 2401(9) of this title);

(B) an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility—

(i) that is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

(C) an improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary—

- (i) improves water management; and
- (ii) fulfills other Federal goals.

(7) Secretary

The term “Secretary” means the Secretary of the Interior.

(Pub. L. 109-451, title II, §202, Dec. 22, 2006, 120 Stat. 3356.)

Editorial Notes

REFERENCES IN TEXT

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

Section 54 of title 26, referred to in par. (2)(B), was repealed by Pub. L. 115-97, title I, §13404(a), Dec. 22, 2017, 131 Stat. 2138.

Statutory Notes and Related Subsidiaries

SHORT TITLE

This subchapter known as the “Twenty-First Century Water Works Act”, see Short Title note set out under section 2401 of this title.

§ 2422. Project eligibility**(a) Eligibility criteria****(1) In general**

The Secretary shall develop and publish in the Federal Register criteria for determining the eligibility of a project for financial assistance under section 2423 of this title.

(2) Inclusions

Eligibility criteria shall include—

(A) submission of an application by the lender to the Secretary;

(B) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

(C) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to repay the project financing from user fees or other dedicated revenue sources;

(D) demonstration by the non-Federal borrower, to the satisfaction of the Secretary, of the ability of the non-Federal borrower to pay all operations, maintenance, and replacement costs of the project facilities; and

(E) such other criteria as the Secretary determines to be appropriate.

(b) Waiver

The Secretary may waive any of the criteria in subsection (a)(2) that the Secretary determines to be duplicative or rendered unnecessary because of an action already taken by the United States.

(c) Projects previously authorized

A project that was authorized for construction under Federal reclamation laws prior to December 22, 2006, shall be eligible for assistance under this subchapter, subject to the criteria established by the Secretary under subsection (a).

¹ So in original. Probably should be “Regulations”.

² See References in Text note below.