

§ 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.
53712(b)	46 App.:1274(m).	

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) **FEEES 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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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, §§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; §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 regu-

lations 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,