

Par. (1). Pub. L. 117–58, §21301(c)(1)(A), inserted par. heading, designated existing provisions as subpar. (A), and realigned margins of subpars. (B) to (F).

Pars. (2) to (10). Pub. L. 117–58, §21301(c)(1)(B), inserted headings.

Par. (11). Pub. L. 117–58, §21301(c)(1)(B), (2)(B), inserted heading and substituted “under this chapter” for “under this title”.

Par. (12). Pub. L. 117–58, §21301(c)(2)(C), amended par. (12) generally. Prior to amendment, text read as follows: “The term ‘railroad’ has the meaning given the term ‘railroad carrier’ in section 20102 of title 49, United States Code.”

Pub. L. 117–58, §21301(c)(1)(B), inserted heading.

Par. (13). Pub. L. 117–58, §21301(c)(1)(B), inserted heading.

Par. (14). Pub. L. 117–58, §21301(c)(2)(E), added par. (14). Former par. (14) redesignated (15).

Pub. L. 117–58, §21301(c)(1)(B), inserted heading.

Par. (15). Pub. L. 117–58, §21301(c)(2)(D), redesignated par. (14) as (15).

### Statutory Notes and Related Subsidiaries

#### SAVINGS PROVISION

Pub. L. 114–94, div. A, title XI, §11607(b), Dec. 4, 2015, 129 Stat. 1699, as amended by Pub. L. 117–58, div. B, title I, §21301(j)(3)(B)(i), Nov. 15, 2021, 135 Stat. 692, provided that: “All provisions under section[s] 22402 through 22404 of title 49, United States Code [see former 45 U.S.C. 822, 823, 836], as they existed on the day before enactment of this Act shall apply to direct loans provided by the Secretary [of Transportation] prior to the date of enactment of this Act [Dec. 4, 2015], and nothing in this title [see Tables for classification] may be construed to limit the payback of a credit risk premium, with interest accrued thereon, if a direct loan provided by the Secretary under such sections has been paid back in full, prior to the date of enactment of this Act.”

Pub. L. 114–94, div. A, title XI, §11610, Dec. 4, 2015, 129 Stat. 1700, as amended by Pub. L. 117–58, div. B, title I, §21301(j)(3)(B)(ii), Nov. 15, 2021, 135 Stat. 692, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b) and section 11607(b) [set out above], this subtitle [see Short Title of 2015 Amendment note set out under section 801 of Title 45, Railroads], and the amendments made by this subtitle, shall not affect any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act [Dec. 4, 2015]. Any such transaction entered into before the date of enactment of this Act shall be administered until completion under its terms as if this Act [div. A of Pub. L. 114–94, see Tables for classification] were not enacted.

“(b) MODIFICATION COSTS.—At the discretion of the Secretary [of Transportation], the authority to accept modification costs on behalf of an applicant under section 22402(f) of title 49, United States Code, may apply with respect to any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act.”

Pub. L. 105–178, title VII, §7203(b)(2), June 9, 1998, 112 Stat. 477, as amended by Pub. L. 117–58, div. B, title I, §21301(j)(3)(C), Nov. 15, 2021, 135 Stat. 692, provided that: “A transaction entered into under the authority of chapter 224 of title 49, United States Code, before the date of enactment of this Act [June 9, 1998] shall be administered until completion under its terms as if this Act [see Tables for classification] were not enacted.”

### § 22402. Direct loans and loan guarantees

(a) GENERAL AUTHORITY.—The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;

(2) entities implementing interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);

(3) government sponsored authorities and corporations;

(4) railroads;

(5) entities participating in joint ventures that include at least 1 of the entities described in paragraph (1), (2), (3), (4), or (6);

(6) limited option freight shippers that own or operate a plant or other facility, solely for the purpose of constructing a rail connection between a plant or facility and a railroad; and

(7) private entities with controlling ownership in 1 or more freight railroads other than Class I carriers.

(b) ELIGIBLE PURPOSES.—

(1) IN GENERAL.—Direct loans and loan guarantees authorized under this section shall be used—

(A) to acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, cuts and fills, stations, tunnels, bridges, yards, buildings, and shops, and to finance costs related to those activities, including pre-construction costs;

(B) to develop or establish new intermodal or railroad facilities;

(C) to develop landside port infrastructure for seaports serviced by rail;

(D) to refinance outstanding debt incurred for the purposes described in subparagraph (A), (B), or (C);

(E) to reimburse planning, permitting, and design expenses relating to activities described in subparagraph (A), (B), or (C); or

(F) to finance economic development, including commercial and residential development, and related infrastructure and activities, that—

(i) incorporates private investment of greater than 20 percent of total project costs;

(ii) is physically connected to, or is within ½ mile of, a fixed guideway transit station, an intercity bus station, a passenger rail station, or a multimodal station, provided that the location includes service by a railroad;

(iii) demonstrates the ability of the applicant to commence the contracting process for construction not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project under this chapter; and

(iv) demonstrates the ability to generate new revenue for the relevant passenger rail station or service by increasing ridership, increasing tenant lease payments, or carrying out other activities that generate revenue exceeding costs.

(2) OPERATING EXPENSES NOT ELIGIBLE.—Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

(c) PRIORITY PROJECTS.—In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

(1) enhance public safety, including projects for the installation of a positive train control system (as defined in section 20157(i));

(2) promote economic development;

(3) enhance the environment;

(4) enable United States companies to be more competitive in international markets;

(5) are endorsed by the plans prepared under section 135 of title 23 or chapter 227 of this title by the State or States in which they are located;

(6) improve railroad stations and passenger facilities and increase transit-oriented development;

(7) preserve or enhance rail or intermodal service to small communities or rural areas;

(8) enhance service and capacity in the national rail system; or

(9) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

(d) EXTENT OF AUTHORITY.—The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$35,000,000,000 at any one time. Of this amount, not less than \$7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

(e) RATES OF INTEREST.—

(1) DIRECT LOANS.—The interest rate on a direct loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(2) LOAN GUARANTEES.—The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

(f) INFRASTRUCTURE PARTNERS.—

(1) AUTHORITY OF SECRETARY.—In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 504(b)(1) of the Federal Credit Reform Act of 1990, including the cost of a modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority thereof, to fund in whole or in part credit risk premiums and modification costs with respect to the loan that is the subject of the application or modification. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

(2) CREDIT RISK PREMIUM AMOUNT.—The Secretary shall determine the amount required

for credit risk premiums under this subsection on the basis of—

(A) the circumstances of the applicant, including the amount of collateral offered, if any;

(B) the proposed schedule of loan disbursements;

(C) historical data on the repayment history of similar borrowers;

(D) consultation with the Congressional Budget Office; and

(E) any other factors the Secretary considers relevant.

(3) CREDITWORTHINESS.—Upon receipt of a proposal from an applicant under this section, the Secretary shall accept as a basis for determining the amount of the credit risk premium under paragraph (2) any of the following in addition to the value of any collateral described in paragraph (6):

(A) The net present value of a future stream of State or local subsidy income or other dedicated revenues to secure the direct loan or loan guarantee.

(B) Adequate coverage requirements to ensure repayment, on a non-recourse basis, from cash flows generated by the project or any other dedicated revenue source, including—

(i) tolls;

(ii) user fees, including operating or tenant charges, facility rents, or other fees paid by transportation service providers or operators for access to, or the use of, infrastructure, including rail lines, bridges, tunnels, yards, or stations; or

(iii) payments owing to the obligor under a public-private partnership.

(C) An investment-grade rating on the direct loan or loan guarantee, as applicable, except that if the total amount of the direct loan or loan guarantee is greater than \$150,000,000, the applicant shall have an investment-grade rating from at least 2 rating agencies on the direct loan or loan guarantee.

(D) Revenue from projected freight or passenger demand for the project based on regionally developed economic forecasts, including projections of any modal diversion resulting from the project.

(4) PAYMENT OF PREMIUMS.—Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts (and in the case of a modification, before the modification is executed), to the extent appropriations are not available to the Secretary to meet the costs of direct loans and loan guarantees, including costs of modifications thereof.

(5) COHORTS OF LOANS.—Subject to the availability of funds appropriated by Congress under section 22406(a)(2), for any direct loan issued before the date of enactment of the Fixing America's Surface Transportation Act (Public Law 114-94) pursuant to sections 501 through 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), the Secretary shall repay the credit risk premiums of such loan, with interest accrued thereon, not later than—

(A) 60 days after the date of enactment of the Surface Transportation Investment Act of 2021 if the borrower has satisfied all obligations attached to such loan; or

(B) if the borrower has not yet satisfied all obligations attached to such loan, 60 days after the date on which all obligations attached to such loan have been satisfied.

(6) COLLATERAL.—

(A) TYPES OF COLLATERAL.—An applicant or infrastructure partner may propose tangible and intangible assets as collateral, exclusive of goodwill. The Secretary, after evaluating each such asset—

(i) shall accept a net liquidation value of collateral; and

(ii) shall consider and may accept—

(I) the market value of collateral; or

(II) in the case of a blanket pledge or assignment of an entire operating asset or basket of assets as collateral, the market value of assets, or, the market value of the going concern, considering—

(aa) inclusion in the pledge of all the assets necessary for independent operational utility of the collateral, including tangible assets such as real property, track and structure, motive power, equipment and rolling stock, stations, systems and maintenance facilities and intangible assets such as long-term shipping agreements, easements, leases and access rights such as for trackage and haulage;

(bb) interchange commitments; and

(cc) the value of the asset as determined through the cost or market approaches, or the market value of the going concern, with the latter considering discounted cash flows for a period not to exceed the term of the direct loan or loan guarantee.

(B) APPRAISAL STANDARDS.—In evaluating appraisals of collateral under subparagraph (A), the Secretary shall consider—

(i) adherence to the substance and principles of the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation; and

(ii) the qualifications of the appraisers to value the type of collateral offered.

(7) REPAYMENT OF CREDIT RISK PREMIUMS.—

The Secretary shall return credit risk premiums paid, and interest accrued on such premiums, to the original source when all obligations of a loan or loan guarantee have been satisfied. This paragraph applies to any project that has been granted assistance under this section after the date of enactment of the Surface Transportation Investment Act of 2021.

(g) PREREQUISITES FOR ASSISTANCE.—The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

(1) repayment of the obligation is required to be made within a term that is not longer than the shorter of—

(A) 75 years after the date of substantial completion of the project;

(B) the estimated useful life of the rail equipment or facilities to be acquired, rehabilitated, improved, developed, or established, subject to an adequate determination of long-term risk; or

(C) for projects determined to have an estimated useful life that is longer than 35 years, the period that is equal to the sum of—

(i) 35 years; and

(ii) the product of—

(I) the difference between the estimated useful life and 35 years; multiplied by

(II) 75 percent.

(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;

(4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b).

(h) CONDITIONS OF ASSISTANCE.—

(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

(A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

(B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

(C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b).

(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project, if applicable. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

(A) the standards of section 24312, as in effect on September 1, 2002, with respect to the project in the same manner that Amtrak is required to comply with such standards for construction work financed under an agreement made under section 24308(a); and

(B) the protective arrangements established under section 22404, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.

(4) The Secretary shall require each recipient of a direct loan or loan guarantee under this section for a project described in subsection (b)(1)(F) to provide a non-Federal match of not less than 25 percent of the total amount expended by the recipient for such project.

(i) APPLICATION PROCESSING PROCEDURES.—

(1) APPLICATION STATUS NOTICES.—Not later than 30 days after the date that the Secretary receives an application under this section, or additional information and material under paragraph (2)(B), the Secretary shall provide the applicant written notice as to whether the application is complete or incomplete.

(2) INCOMPLETE APPLICATIONS.—If the Secretary determines that an application is incomplete, the Secretary shall—

(A) provide the applicant with a description of all of the specific information or material that is needed to complete the application, including any information required by an independent financial analyst; and

(B) allow the applicant to resubmit the application with the information and material described under subparagraph (A) to complete the application.

(3) APPLICATION APPROVALS AND DISAPPROVALS.—

(A) IN GENERAL.—Not later than 60 days after the date the Secretary notifies an applicant that an application is complete under paragraph (1), the Secretary shall provide the applicant written notice as to whether the Secretary has approved or disapproved the application.

(B) ACTIONS BY THE OFFICE OF MANAGEMENT AND BUDGET.—In order to enable compliance with the time limit under subparagraph (A), the Office of Management and Budget shall take any action required with respect to the application within that 60-day period.

(4) STREAMLINED APPLICATION REVIEW PROCESS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Surface Transportation Investment Act of 2021, the Secretary shall implement procedures and measures to economize and make available an streamlined application process or processes at the request of applicants seeking loans or loan guarantees.

(B) CRITERIA.—Applicants seeking loans and loan guarantees under this section shall—

(i) seek a total loan or loan guarantee value not exceeding \$150,000,000;

(ii) meet eligible project purposes described in subparagraphs (A) and (B) of subsection (b)(1); and

(iii) meet other criteria considered appropriate by the Secretary, in consultation with the Council on Credit and Finance of the Department of Transportation.

(C) EXPEDITED CREDIT REVIEW.—The total period between the submission of an application and the approval or disapproval of an application for a direct loan or loan guarantee under this paragraph may not exceed 90 days. If an application review conducted under this paragraph exceeds 90 days, the Secretary shall—

(i) provide written notice to the applicant, including a justification for the delay and updated estimate of the time needed for approval or disapproval; and

(ii) publish the notice on the dashboard described in paragraph (5).

(5) DASHBOARD.—The Secretary shall post on the Department of Transportation's Internet Web site a monthly report that includes, for each application—

(A) the applicant type;

(B) the location of the project;

(C) a brief description of the project, including its purpose;

(D) the requested direct loan or loan guarantee amount;

(E) the date on which the Secretary provided application status notice under paragraph (1);

(F) the date that the Secretary provided notice of approval or disapproval under paragraph (3); and

(G) whether the project utilized the streamlined application process under paragraph (4).

(6) CREDITWORTHINESS REVIEW STATUS.—

(A) IN GENERAL.—The Secretary shall maintain status information related to each application for a loan or loan guarantee, which shall be provided to the applicant upon request, including—

(i) the total value of the proposed loan or loan guarantee;

(ii) the name of the applicant or applicants submitting the application;

(iii) the proposed capital structure of the project to which the loan or loan guarantee would be applied, including the proposed Federal and non-Federal shares of the total project cost;

(iv) the type of activity to receive credit assistance, including whether the project is new construction, the rehabilitation of existing rail equipment or facilities, or the refinancing an existing loan or loan guarantee;

(v) if a deferred payment is proposed, the length of such deferment;

(vi) the credit rating or ratings provided for the applicant;

(vii) if other credit instruments are involved, the proposed subordination relationship and a description of such other credit instruments;

(viii) a schedule for the readiness of proposed investments for financing;

(ix) a description of any Federal permits required, including under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any waivers under section 5323(j) (commonly known as the “Buy America Act”);

(x) other characteristics of the proposed activity to be financed, borrower, key agreements, or the nature of the credit that the Secretary considers to be fundamental to the creditworthiness review;

(xi) the status of the application in the pre-application review and selection process;

(xii) the cumulative amounts paid by the Secretary to outside advisors related to the application, including financial and legal advisors;

(xiii) a description of the key rating factors used by the Secretary to determine credit risk, including—

(I) the factors used to determine risk for the proposed application;

(II) an adjectival risk rating for each identified factor, ranked as either low, moderate, or high;

(xiv) a nonbinding estimate of the credit risk premium, which may be in the form of—

(I) a range, based on the assessment of risk factors described in clause (xiii); or

(II) a justification for why the estimate of the credit risk premium cannot be determined based on available information; and

(xv) a description of the key information the Secretary needs from the applicant to complete the credit review process and make a final determination of the credit risk premium.

(B) REPORT UPON REQUEST.—The Secretary shall provide the information described in subparagraph (A) not later than 30 days after a request from the applicant.

(C) EXCEPTION.—Applications processed using the streamlined application review process under paragraph (4) are not subject to the requirements under this paragraph.

(j) REPAYMENT SCHEDULES.—

(1) IN GENERAL.—The Secretary shall establish a repayment schedule requiring payments to commence not later than 5 years after the date of substantial completion.

(2) ACCRUAL.—Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.

(3) DEFERRED PAYMENTS.—

(A) IN GENERAL.—If at any time after the date of substantial completion the obligor is unable to pay the scheduled loan repayments of principal and interest on a direct loan provided under this section, the Secretary, subject to subparagraph (B), may allow, for a maximum aggregate time of 1 year over the duration of the direct loan, the obligor to add unpaid principal and interest to the outstanding balance of the direct loan.

(B) INTEREST.—A payment deferred under subparagraph (A) shall—

(i) continue to accrue interest under paragraph (2) until the loan is fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan.

(4) PREPAYMENTS.—

(A) USE OF EXCESS REVENUES.—With respect to a direct loan provided by the Secretary under this section, any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and direct loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the direct loan without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—The direct loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(k) SALE OF DIRECT LOANS.—

(1) IN GENERAL.—Subject to paragraph (2) and as soon as practicable after substantial completion of a project, the Secretary, after notifying the obligor, may sell to another entity or reoffer into the capital markets a direct loan for the project if the Secretary determines that the sale or reoffering has a high probability of being made on favorable terms.

(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the prior written consent of the obligor.

(l) NONSUBORDINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), a direct loan provided by the Secretary under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(2) PREEXISTING INDENTURES.—

(A) IN GENERAL.—The Secretary may waive the requirement under paragraph (1) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture if—

(i) the direct loan is rated in the A category or higher;

(ii) the direct loan is secured and payable from pledged revenues not affected by project performance, such as a tax-based revenue pledge or a system-backed pledge of project revenues; and

(iii) the program share, under this chapter, of eligible project costs is 50 percent or less.

(B) LIMITATION.—The Secretary may impose limitations for the waiver of the non-subordination requirement under this paragraph if the Secretary determines that such limitations would be in the financial interest of the Federal Government.

(m) MASTER CREDIT AGREEMENTS.—

(1) IN GENERAL.—Subject to subsection (d) and paragraph (2) of this subsection, the Sec-

retary may enter into a master credit agreement that is contingent on all of the conditions for the provision of a direct loan or loan guarantee, as applicable, under this chapter and other applicable requirements being satisfied prior to the issuance of the direct loan or loan guarantee.

(2) CONDITIONS.—Each master credit agreement shall—

(A) establish the maximum amount and general terms and conditions of each applicable direct loan or loan guarantee;

(B) identify 1 or more dedicated non-Federal revenue sources that will secure the repayment of each applicable direct loan or loan guarantee;

(C) provide for the obligation of funds for the direct loans or loan guarantees contingent on and after all requirements have been met for the projects subject to the master credit agreement; and

(D) provide 1 or more dates, as determined by the Secretary, before which the master credit agreement results in each of the direct loans or loan guarantees or in the release of the master credit agreement.

(n) NON-FEDERAL SHARE.—The proceeds of a loan provided under this section may be used as the non-Federal share of project costs for any grant program administered by the Secretary if such loan is repayable from non-Federal funds.

(Added and amended Pub. L. 117-58, div. B, title I, § 21301(a)(2), (4), (d), Nov. 15, 2021, 135 Stat. 683, 684.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 410(a) of the Amtrak Reform and Accountability Act of 1997, referred to in subsec. (a)(2), is section 410(a) of Pub. L. 105-134, which is set out as a note under section 24101 of this title.

Section 504(b)(1) of the Federal Credit Reform Act of 1990, referred to in subsec. (f)(1), is classified to section 661c(b)(1) of Title 2, The Congress.

The date of enactment of the Fixing America's Surface Transportation Act, referred to in subsec. (f)(5), is the date of enactment of Pub. L. 114-94, which was approved Dec. 4, 2015.

Sections 501 through 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (f)(5), are sections 501 to 504 of Pub. L. 94-210, which are classified to sections 22401 to 22404 of this title.

The date of enactment of the Surface Transportation Investment Act of 2021, referred to in subsecs. (f)(5)(A), (7), and (i)(4)(A), is the date of enactment of div. B of Pub. L. 117-58, which was approved Nov. 15, 2021.

The National Environmental Policy Act of 1969, referred to in subsec. (i)(6)(A)(ix), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

#### CODIFICATION

The text of section 822 of Title 45, Railroads, which was transferred to this section and amended by Pub. L. 117-58, div. B, title I, § 21301(a)(4), (d), was based on Pub. L. 94-210, title V, § 502, as added Pub. L. 105-178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 473; amended Pub. L. 109-59, title IX, § 9003(b)-(g), Aug. 10, 2005, 119 Stat. 1921-1923; Pub. L. 110-432, div. A, title VII, § 701(e), Oct.

16, 2008, 122 Stat. 4906; Pub. L. 114-94, div. A, title XI, §§ 11603-11605(a), 11606, 11607(a), 11608, 11609, Dec. 4, 2015, 129 Stat. 1694, 1695, 1697-1700; Pub. L. 116-94, div. H, title I, § 192, Dec. 20, 2019, 133 Stat. 2972; Pub. L. 116-159, div. B, title I, § 1104(b), Oct. 1, 2020, 134 Stat. 727.

#### AMENDMENTS

2021—Pub. L. 117-58, § 21301(a)(4), transferred text of section 822 of Title 45, Railroads, to this section.

Subsec. (a)(2). Pub. L. 117-58, § 21301(d)(1)(A), inserted “entities implementing” before “interstate compacts”.

Subsec. (a)(5). Pub. L. 117-58, § 21301(d)(1)(B), inserted “entities participating in” before “joint ventures” and struck out “and” at end.

Subsec. (a)(6), (7). Pub. L. 117-58, § 21301(d)(1)(C), added pars. (6) and (7) and struck out former par. (6) which read as follows: “solely for the purpose of constructing a rail connection between a plant or facility and a railroad, limited option freight shippers that own or operate a plant or other facility.”

Subsec. (b)(1). Pub. L. 117-58, § 21301(d)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) related to eligible purposes for direct loans and loan guarantees.

Subsec. (b)(3). Pub. L. 117-58, § 21301(d)(2)(B), struck out par. (3). Prior to amendment, text read as follows: “The Secretary may provide a direct loan or loan guarantee under this section for a project described in paragraph (1)(E) until September 30, 2021.”

Subsec. (c)(1). Pub. L. 117-58, § 21301(d)(3)(A), struck out “of title 49, United States Code” after “section 20157(i)”.

Subsec. (c)(5). Pub. L. 117-58, § 21301(d)(3)(B), substituted “this title” for “title 49, United States Code”.

Subsec. (e)(1). Pub. L. 117-58, § 21301(d)(4), amended subsec. (e) generally. Prior to amendment, text read as follows: “The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.”

Subsec. (f)(3). Pub. L. 117-58, § 21301(d)(5)(A)(i), substituted “Upon receipt of a proposal from an applicant under this section,” for “An applicant may propose and” and “collateral described in paragraph (6)” for “tangible asset” in introductory provisions.

Subsec. (f)(3)(B)(ii). Pub. L. 117-58, § 21301(d)(5)(A)(ii), inserted “, including operating or tenant charges, facility rents, or other fees paid by transportation service providers or operators for access to, or the use of, infrastructure, including rail lines, bridges, tunnels, yards, or stations” after “user fees”.

Subsec. (f)(3)(C). Pub. L. 117-58, § 21301(d)(5)(A)(iii), substituted “\$150,000,000” for “\$75,000,000”.

Subsec. (f)(3)(D). Pub. L. 117-58, § 21301(d)(5)(A)(iv), added subpar. (D).

Subsec. (f)(5) to (7). Pub. L. 117-58, § 21301(d)(5)(B), added pars. (5) to (7).

Subsec. (g)(1). Pub. L. 117-58, § 21301(d)(6), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “repayment of the obligation is required to be made within a term of not more than the lesser of—

“(A) 35 years after the date of substantial completion of the project; or

“(B) the estimated useful life of the rail equipment or facilities to be acquired, rehabilitated, improved, developed, or established;”.

Subsec. (h)(3)(A). Pub. L. 117-58, § 21301(d)(7)(A)(i), substituted “Amtrak” for “the National Railroad Passenger Corporation” and struck out “of title 49, United States Code” after “section 24312” and “of that title” after “section 24308(a)”.

Subsec. (h)(3)(B). Pub. L. 117-58, § 21301(d)(7)(A)(ii), substituted “section 22404” for “section 504 of this Act”.

Subsec. (h)(4). Pub. L. 117-58, § 21301(d)(7)(B), substituted “(b)(1)(F)” for “(b)(1)(E)”.

Subsec. (i)(4). Pub. L. 117-58, § 21301(d)(8)(A), amended par. (4) generally. Prior to amendment, text read as follows: “The Secretary shall implement procedures and measures to economize the time and cost involved in

obtaining an approval or a disapproval of an application for a direct loan or loan guarantee under this title.”

Subsec. (i)(5)(G). Pub. L. 117–58, § 21301(d)(8)(B), added subpar. (G).

Subsec. (i)(6). Pub. L. 117–58, § 21301(d)(8)(C), added par. (6).

Subsec. (l)(2)(A)(iii). Pub. L. 117–58, § 21301(d)(9), substituted “under this chapter” for “under this title”.

Subsec. (m)(1). Pub. L. 117–58, § 21301(d)(10), substituted “under this chapter” for “under this title”.

Subsec. (n). Pub. L. 117–58, § 21301(d)(11), added subsec. (n).

### Statutory Notes and Related Subsidiaries

#### SUBSTANTIVE CRITERIA AND STANDARDS

Pub. L. 117–58, div. B, title I, § 21302, Nov. 15, 2021, 135 Stat. 693, provided that: “Not later than 180 days after the date of enactment of this Act [Nov. 15, 2021], the Secretary [of Transportation] shall update the publicly available credit program guide in accordance with the provisions of chapter 224 of title 49, United States Code, as added by section 21301 [of div. B of Pub. L. 117–58].”

#### SEMIANNUAL REPORT ON TRANSIT-ORIENTED DEVELOPMENT ELIGIBILITY

Pub. L. 117–58, div. B, title I, § 21303, Nov. 15, 2021, 135 Stat. 693, provided that: “Not later than 6 months after the date of enactment of this Act [Nov. 15, 2021], and every 6 months thereafter, the Secretary [of Transportation] shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that identifies—

“(1) the number of applications submitted to the Department [of Transportation] for a direct loan or loan guarantee under section 22402(b)(1)(E) of title 49, United States Code, as amended by section 21301 [of div. B of Pub. L. 117–58];

“(2) the number of such loans or loan guarantees that were provided to the applicants; and

“(3) for each such application, the reasons for providing or declining to provide the requested loan or loan guarantee.”

#### RETURN OF CREDIT RISK PREMIUMS NOT USED TO MITIGATE LOSSES

Pub. L. 115–265, title II, § 212(d), Oct. 11, 2018, 132 Stat. 3749, as amended by Pub. L. 117–58, div. B, title I, § 21301(j)(3)(D), Nov. 15, 2021, 135 Stat. 692, provided that:

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation, for purposes of section 22402 of title 49, United States Code [see former 45 U.S.C. 822(f)(4)] (as in effect on the day before the amendments made by section 11607 of Public Law 114–94 [129 Stat. 1698] took effect [Oct. 1, 2015])—

“(A) not later than 30 days after the date of enactment of this Act [Oct. 11, 2018], and in consultation with the Director of the Office of Management and Budget, shall define the term ‘cohorts of loans’;

“(B) before the deadline described in paragraph (2), shall return to the original source, on a pro rata basis, the credit risk premiums paid for the loans in the cohort of loans, with interest accrued thereon, that were not used to mitigate losses; and

“(C) shall not treat the repayment of a loan after the date of enactment of Public Law 114–94 [Dec. 4, 2015] as precluding, limiting, or negatively affecting the satisfaction of the obligation of its cohort prior to the enactment of Public Law 114–94.

“(2) DEADLINE DESCRIBED.—The deadline described in this paragraph is—

“(A) if all obligations attached to a cohort of loans have been satisfied, not later than 60 days after the date of enactment of this Act; and

“(B) if all obligations attached to a cohort of loans have not been satisfied, not later than 60 days after the date on which all obligations attached to the cohort of loans are satisfied.”

### § 22403. Administration of direct loans and loan guarantees

#### (a) APPLICATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe the form and contents required of applications for assistance under section 22402, to enable the Secretary to determine the eligibility of the applicant’s proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section, including a program guide, a standard term sheet, and specific timetables.

(2) DOCUMENTATION.—An applicant meeting the size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) may provide unaudited financial statements as documentation of historical financial information if such statements are accompanied by the applicant’s Federal tax returns and Internal Revenue Service tax verifications for the corresponding years.

(b) FULL FAITH AND CREDIT.—All guarantees entered into by the Secretary under section 22402 shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(c) ASSIGNMENT OF LOAN GUARANTEES.—The holder of a loan guarantee made under section 22402 may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

(d) MODIFICATIONS.—The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States;

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation; and

(3) the modification cost has been covered under section 22402(f).

(e) COMPLIANCE.—The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this chapter, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

(f) COMMERCIAL VALIDITY.—For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this chapter, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(g) DEFAULT.—The Secretary shall prescribe regulations setting forth procedures in the event