

agement and operations' has the meaning given the term under section 101(a) of title 23, United States Code [section 101(a) of this title does not define the term]."

ENVIRONMENTAL REVIEW OF ACTIVITIES THAT SUPPORT DEPLOYMENT OF INTELLIGENT TRANSPORTATION SYSTEMS

Pub. L. 109-59, title VI, § 6010, Aug. 10, 2005, 119 Stat. 1877, provided that:

"(a) CATEGORICAL EXCLUSIONS.—Not later than one year after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall initiate a rulemaking process to establish, to the extent appropriate, categorical exclusions for activities that support the deployment of intelligent transportation infrastructure and systems from the requirement that an environmental assessment or an environmental impact statement be prepared under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in compliance with the standards for categorical exclusions established by that Act [42 U.S.C. 4321 et seq.].

"(b) NATIONWIDE PROGRAMMATIC AGREEMENT.—

"(1) DEVELOPMENT.—The Secretary [of Transportation] shall develop a nationwide programmatic agreement governing the review of activities that support the deployment of intelligent transportation infrastructure and systems in accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and the regulations of the Advisory Council on Historic Preservation.

"(2) CONSULTATION.—The Secretary shall develop the agreement under paragraph (1) in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (26 U.S.C. 470i et seq.) and after soliciting the views of other interested parties.

"(c) INTELLIGENT TRANSPORTATION INFRASTRUCTURE AND SYSTEMS DEFINED.—In this section, the term 'intelligent transportation infrastructure and systems' means intelligent transportation infrastructure and intelligent transportation systems, as such terms are defined in subtitle C of title V of this Act [subtitle C (§§ 5301-5310) of title V of Pub. L. 109-59, enacting this section and section 513 of this title and provisions set out as a note above]."

§ 513. Use of funds for ITS activities

(a) IN GENERAL.—For each fiscal year, not more than \$250,000 of the funds made available to carry out this¹ subtitle C of title V of the SAFETEA-LU shall be used for intelligent transportation system outreach, public relations, displays, tours, and brochures.

(b) APPLICABILITY.—Subsection (a) shall not apply to intelligent transportation system training, scholarships, or the publication or distribution of research findings, technical guidance, or similar documents.

(Added Pub. L. 109-59, title V, § 5302(a), Aug. 10, 2005, 119 Stat. 1805.)

REFERENCES IN TEXT

Subtitle C of title V of the SAFETEA-LU, referred to in subsec. (a), is subtitle C (§§ 5301-5310) of title V of Pub. L. 109-59, Aug. 10, 2005, 119 Stat. 1804-1813, which enacted this section and section 512 of this title and provisions set out as a note under section 512 of this title.

CHAPTER 6—INFRASTRUCTURE FINANCE

Sec.
601. Generally applicable provisions.

Sec.
602. Determination of eligibility and project selection.
603. Secured loans.
604. Lines of credit.
605. Program administration.
606. State and local permits.
607. Regulations.
608. Funding.
609. Reports to Congress.
610. State infrastructure bank program.

CODIFICATION

This chapter, consisting of sections 601 to 610 of this title, was previously set out as subchapter II, consisting of sections 181 to 190, of chapter 1 of this title.

§ 601. Generally applicable provisions

(a) DEFINITIONS.—In this chapter, the following definitions apply:

(1) ELIGIBLE PROJECT COSTS.—The term "eligible project costs" means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(2) FEDERAL CREDIT INSTRUMENT.—The term "Federal credit instrument" means a secured loan, loan guarantee, or line of credit authorized to be made available under this chapter with respect to a project.

(3) INVESTMENT-GRADE RATING.—The term "investment-grade rating" means a rating of BBB minus, Baa3, bbb minus, BBB (low), or higher assigned by a rating agency to project obligations.

(4) LENDER.—The term "lender" means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (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.)), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

(5) LINE OF CREDIT.—The term "line of credit" means an agreement entered into by the Secretary with an obligor under section 604 to provide a direct loan at a future date upon the occurrence of certain events.

(6) LOAN GUARANTEE.—The term "loan guarantee" means any guarantee or other pledge

¹ So in original.

by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

(7) OBLIGOR.—The term “obligor” means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(8) PROJECT.—The term “project” means—

(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

(D) a project that—

(i) is a project—

(I) for a public freight rail facility or a private facility providing public benefit for highway users;

(II) for an intermodal freight transfer facility;

(III) for a means of access to a facility described in subclause (I) or (II);

(IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or

(V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;

(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and

(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

(9) PROJECT OBLIGATION.—The term “project obligation” means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

(10) RATING AGENCY.—The term “rating agency” means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934.

(11) SECURED LOAN.—The term “secured loan” means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

(12) STATE.—The term “State” has the meaning given the term in section 101.

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

(14) SUBSTANTIAL COMPLETION.—The term “substantial completion” means the opening of a project to vehicular or passenger traffic.

(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.

(Added Pub. L. 105–178, title I, §1503(a), June 9, 1998, 112 Stat. 241, §181; renumbered §601 and amended Pub. L. 109–59, title I, §§1601(a), 1602(b)(1), (5), (d), Aug. 10, 2005, 119 Stat. 1239, 1246, 1247; Pub. L. 109–291, §4(b)(6), Sept. 29, 2006, 120 Stat. 1338; Pub. L. 110–244, title I, §101(r), June 6, 2008, 122 Stat. 1577.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(4), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, 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 Internal Revenue Code of 1986, referred to in subsec. (a)(4), is set out in Title 26, Internal Revenue Code.

Section 3(a) of the Securities and Exchange Act of 1934, referred to in subsec. (a)(10), is classified to section 78c(a) of Title 15, Commerce and Trade.

The Federal Credit Reform Act of 1990, referred to in subsec. (a)(13), 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, and amended, 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.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–244 inserted “bbb minus, BBB (low),” after “Baa3.”

2006—Subsec. (a)(10). Pub. L. 109–291, which directed amendment of section 181(11) of this title by substituting “registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934” for “identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization”, was executed to subsec. (a)(10) of this section by making the substitution for “identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization” to reflect the probable intent of Congress and the amendment by Pub. L. 109–59. See 2005 Amendment notes below.

2005—Pub. L. 109–59, §1602(d), renumbered section 181 of this title as this section.

Pub. L. 109–59, §1602(b)(1), (5), substituted “Generally applicable provisions” for “Definitions” in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted “In this chapter” for “In this subchapter” in introductory provisions, “this chapter” for “this subchapter” in par. (2), “604” for “184” in par. (5), “603” for “183” in par. (11), and added subsec. (b).

Par (3). Pub. L. 109–59, §1601(a)(1), struck out “category” after “rating” and “offered into the capital markets” after “obligations”.

Par. (7). Pub. L. 109–59, §1601(a)(2), redesignated par. (8) as (7) and struck out heading and text of former par. (7). Text read as follows: “The term ‘local servicer’ means—

“(A) a State infrastructure bank established under this title; or

“(B) a State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.”

Par. (8). Pub. L. 109–59, §1601(a)(2), (3), redesignated par. (9) as (8), substituted semicolon for period at end of subpar. (B), added subpar. (D), and struck out former subpar. (D) which read as follows: “a project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.” Former par. (8) redesignated (7).

Par. (9). Pub. L. 109–59, §1601(a)(2), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Par. (10). Pub. L. 109–59, §1601(a)(2), (4), redesignated par. (11) as (10) and substituted “credit” for “bond”. Former par. (10) redesignated (9).

Pars. (11) to (15). Pub. L. 109–59, §1601(a)(2), redesignated pars. (12) to (15) as (11) to (14), respectively. Former par. (11) redesignated (10).

CONGRESSIONAL FINDINGS

Pub. L. 105–178, title I, §1502, June 9, 1998, 112 Stat. 241, provided that: “Congress finds that—

“(1) a well-developed system of transportation infrastructure is critical to the economic well-being, health, and welfare of the people of the United States;

“(2) traditional public funding techniques such as grant programs are unable to keep pace with the infrastructure investment needs of the United States because of budgetary constraints at the Federal, State, and local levels of government;

“(3) major transportation infrastructure facilities that address critical national needs, such as intermodal facilities, border crossings, and multistate trade corridors, are of a scale that exceeds the capacity of Federal and State assistance programs in effect on the date of enactment of this Act [June 9, 1998];

“(4) new investment capital can be attracted to infrastructure projects that are capable of generating their own revenue streams through user charges or other dedicated funding sources; and

“(5) a Federal credit program for projects of national significance can complement existing funding resources by filling market gaps, thereby leveraging substantial private co-investment.”

STATE INFRASTRUCTURE BANK PILOT PROGRAMS

Pub. L. 105–178, title I, §1511, June 9, 1998, 112 Stat. 251, as amended by Pub. L. 107–117, div. B, §1108, Jan. 10, 2002, 115 Stat. 2332, provided that:

“(a) DEFINITIONS.—In this section:

“(1) OTHER ASSISTANCE.—The term ‘other assistance’ includes any use of funds in an infrastructure bank—

“(A) to provide credit enhancements;

“(B) to serve as a capital reserve for bond or debt instrument financing;

“(C) to subsidize interest rates;

“(D) to ensure the issuance of letters of credit and credit instruments;

“(E) to finance purchase and lease agreements with respect to transit projects;

“(F) to provide bond or debt financing instrument security; and

“(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which the assistance is being provided.

“(2) STATE.—The term ‘State’ has the meaning given the term under section 401 of title 23, United States Code.

“(b) COOPERATIVE AGREEMENTS.—

“(1) IN GENERAL.—

“(A) PURPOSE OF AGREEMENTS.—Subject to this section, the Secretary may enter into cooperative agreements with the States of California, Florida, Missouri, and [sic] Rhode Island, and Texas for the establishment of State infrastructure banks and multistate infrastructure banks for making loans and providing other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section, provided that Texas may not compete for funds previously allocated or appropriated to any other State.

“(B) CONTENTS OF AGREEMENTS.—Each cooperative agreement shall specify procedures and guidelines for establishing, operating, and providing assistance from the infrastructure bank.

“(2) INTERSTATE COMPACTS.—If 2 or more States enter into a cooperative agreement under paragraph (1) with the Secretary for the establishment of a multistate infrastructure bank, Congress grants consent to those States to enter into an interstate compact establishing the bank in accordance with this section.

“(c) FUNDING.—

“(1) CONTRIBUTION.—Notwithstanding any other provision of law, the Secretary may allow, subject to subsection (h)(1), a State that enters into a cooperative agreement under this section to contribute to the infrastructure bank established by the State not to exceed—

“(A)(i) the total amount of funds apportioned to the State under each of paragraphs (1), (3), and (4) of section 104(b) and section 144 of title 23, United States Code, excluding funds set aside under paragraphs (1) and (2) of section 133(d) of such title; and

“(ii) the total amount of funds allocated to the State under section 105 of such title;

“(B) the total amount of funds made available to the State or other Federal transit grant recipient for capital projects (as defined in section 5302 of title 49, United States Code) under sections 5307, 5309, and 5311 of such title; and

“(C) the total amount of funds made available to the State under subtitle V of title 49, United States Code.

“(2) CAPITALIZATION GRANT.—For the purposes of this section, Federal funds contributed to the infrastructure bank under this subsection shall constitute a capitalization grant for the infrastructure bank.

“(3) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds that are apportioned or allocated to a State under section 104(b)(3) of title 23, United States Code, and attributed to urbanized areas of a State with a population of over 200,000 individuals under section 133(d)(2) of such title may be used to provide assistance from an infrastructure bank under this section with respect to a project only if the metropolitan planning organization designated for the area concurs, in writing, with the provision of the assistance.

“(d) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—

“(1) IN GENERAL.—An infrastructure bank established under this section may make loans or provide other assistance to a public or private entity in an amount equal to all or part of the cost of carrying out a project eligible for assistance under this section.

“(2) SUBORDINATION OF LOANS.—The amount of any loan or other assistance provided for the project may be subordinated to any other debt financing for the project.

“(3) INITIAL ASSISTANCE.—Initial assistance provided with respect to a project from Federal funds contributed to an infrastructure bank under this section shall not be made in the form of a grant.

“(e) QUALIFYING PROJECTS.—

“(1) IN GENERAL.—Subject to paragraph (2), funds in an infrastructure bank established under this section

may be used only to provide assistance with respect to projects eligible for assistance under title 23, United States Code, for capital projects (as defined in section 5302 of title 49, United States Code), or for any other project related to surface transportation that the Secretary determines to be appropriate.

“(2) INTERSTATE FUNDS.—Funds contributed to an infrastructure bank from funds apportioned to a State under section 104(b)(4) of title 23, United States Code, may be used only to provide assistance with respect to projects eligible for assistance under such paragraph.

“(3) RAIL PROGRAM FUNDS.—Funds contributed to an infrastructure bank from funds made available to a State under subtitle V of title 49, United States Code, shall be used in a manner consistent with any project description specified under the law making the funds available to the State.

“(f) INFRASTRUCTURE BANK REQUIREMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), in order to establish an infrastructure bank under this section, each State establishing such a bank shall—

“(A) contribute, at a minimum, to the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and contributed to the bank under subsection (c), except that if the State has a higher Federal share payable under section 120(b) of title 23, United States Code, the State shall be required to contribute only an amount commensurate with the higher Federal share;

“(B) ensure that the bank maintains on a continuing basis an investment grade rating on its debt issuances and its ability to pay claims under credit enhancement programs of the bank;

“(C) ensure that investment income generated by funds contributed to the bank will be—

“(i) credited to the bank;

“(ii) available for use in providing loans and other assistance to projects eligible for assistance from the bank; and

“(iii) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

“(D) ensure that any loan from the bank will bear interest at or below market rates, as determined by the State, to make the project that is the subject of the loan feasible;

“(E) ensure that repayment of the loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

“(F) ensure that the term for repaying any loan will not exceed the lesser of—

“(i) 35 years after the date of the first payment on the loan under subparagraph (E); or

“(ii) the useful life of the investment; and

“(G) require the bank to make a biennial report to the Secretary and to make such other reports as the Secretary may require in guidelines.

“(2) WAIVERS BY THE SECRETARY.—The Secretary may waive a requirement of any of subparagraphs (C) through (G) of paragraph (1) with respect to an infrastructure bank if the Secretary determines that the waiver is consistent with the objectives of this section.

“(g) LIMITATION ON REPAYMENTS.—Notwithstanding any other provision of law, the repayment of a loan or other assistance provided from an infrastructure bank under this section may not be credited toward the non-Federal share of the cost of any project.

“(h) SECRETARIAL REQUIREMENTS.—In administering this section, the Secretary shall—

“(1) ensure that Federal disbursements shall be at an annual rate of not more than 20 percent of the amount designated by the State for State infrastructure bank capitalization under subsection (c)(1), ex-

cept that the Secretary may disburse funds to a State in an amount needed to finance a specific project; and

“(2) revise cooperative agreements entered into with States under section 350 of the National Highway System Designation Act of 1995 (Public Law 104-59 [set out below]) to comply with this section.

“(i) APPLICABILITY OF FEDERAL LAW.—

“(1) IN GENERAL.—The requirements of titles 23 and 49, United States Code, that would otherwise apply to funds made available under such title and projects assisted with those funds shall apply to—

“(A) funds made available under such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (f); and

“(B) projects assisted by the bank through the use of the funds;

except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of title 23 and section 5333 of title 49), is not consistent with the objectives of this section.

“(2) REPAYMENTS.—The requirements of titles 23 and 49, United States Code, shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

“(j) UNITED STATES NOT OBLIGATED.—

“(1) IN GENERAL.—The contribution of Federal funds to an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party. No third party shall have any right against the United States for payment solely by virtue of the contribution.

“(2) STATEMENT.—Any security or debt financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

“(k) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31, United States Code, shall not apply to funds contributed under this section.

“(l) PROGRAM ADMINISTRATION.—

“(1) IN GENERAL.—A State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

“(2) NON-FEDERAL FUNDS.—The limitation described in paragraph (1) shall not apply to non-Federal funds.”

Pub. L. 104-59, title III, §350, Nov. 28, 1995, 109 Stat. 618, provided that:

“(a) IN GENERAL.—

“(1) COOPERATIVE AGREEMENTS.—Subject to the provisions of this section, the Secretary [of Transportation] may enter into cooperative agreements with not to exceed 10 States for the establishment of State infrastructure banks and multistate infrastructure banks for making loans and providing other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

“(2) INTERSTATE COMPACTS.—Congress grants consent to 2 or more of the States, entering into a cooperative agreement under paragraph (1) with the Secretary for the establishment of a multistate infrastructure bank, to enter into an interstate compact establishing such bank in accordance with this section.

“(b) FUNDING.—

“(1) SEPARATE ACCOUNTS.—An infrastructure bank established under this section shall maintain a separate highway account for Federal funds contributed to the bank under paragraph (2) and a separate transit account for Federal funds contributed to the bank under paragraph (3). No Federal funds contributed or credited to an account of an infrastructure bank established under this section may be commingled with

Federal funds contributed or credited to any other account of such bank.

“(2) HIGHWAY ACCOUNT.—Notwithstanding any other provision of law, the Secretary may allow, subject to subsection (g)(1), a State entering into a cooperative agreement under this section to contribute not to exceed—

“(A) 10 percent of the funds apportioned to the State for each of fiscal years 1996 and 1997 under each of sections 104(b)(1), 104(b)(3), 104(b)(5)(B), 144, and 160 of title 23, United States Code, and section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, 23 U.S.C. 104 note]; and

“(B) 10 percent of the funds allocated to the State for each of such fiscal years under each of section 157 of such title and section 1013(c) of such Act [formerly 23 U.S.C. 157 note];

into the highway account of the infrastructure bank established by the State. Federal funds contributed to such account under this paragraph shall constitute for purposes of this section a capitalization grant for the highway account of the infrastructure bank.

“(3) TRANSIT ACCOUNT.—Notwithstanding any other provision of law, the Secretary may allow, subject to subsection (g)(1), a State entering into a cooperative agreement under this section, and any other Federal transit grant recipient, to contribute not to exceed 10 percent of the funds made available to the State or other Federal transit grant recipient in each of fiscal years 1996 and 1997 for capital projects under sections 5307, 5309, and 5311 of title 49, United States Code, into the transit account of the infrastructure bank established by the State. Federal funds contributed to such account under this paragraph shall constitute for purposes of this section a capitalization grant for the transit account of the infrastructure bank.

“(4) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds that are apportioned or allocated to a State under section 104(b)(3) or 160 of title 23, United States Code, or under section 1013(c) or 1015 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240, 23 U.S.C. 104 note, formerly 157 note] and attributed to urbanized areas of a State with an urbanized population of over 200,000 under section 133(d)(3) of such title may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

“(c) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—An infrastructure bank established under this section may make loans or provide other assistance to a public or private entity in an amount equal to all or part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other assistance provided for such project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds contributed to an infrastructure bank under this section may not be made in the form of a grant.

“(d) QUALIFYING PROJECTS.—Federal funds in the highway account of an infrastructure bank established under this section may be used only to provide assistance with respect to construction of Federal-aid highways. Federal funds in the transit account of such bank may be used only to provide assistance with respect to capital projects.

“(e) INFRASTRUCTURE BANK REQUIREMENTS.—In order to establish an infrastructure bank under this section, each State establishing the bank shall—

“(1) contribute, at a minimum, in each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and contributed to the bank; except that if the contribution is into the highway account of the bank and the State has a lower non-Federal share under section 120(b) of title 23, United States Code, such percentage shall be adjusted by the

Secretary to correspond with such lower non-Federal share;

“(2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt issuances or has a sufficient level of bond or debt financing instrument insurance to maintain the viability of the bank;

“(3) ensure that investment income generated by funds contributed to an account of the bank will be—

“(A) credited to the account;

“(B) available for use in providing loans and other assistance to projects eligible for assistance from the account; and

“(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

“(4) provide that the repayment of a loan or other assistance from an account of the bank under this section shall be consistent with the repayment provisions of section 129(a)(7) of title 23, United States Code, except to the extent the Secretary determines that such provisions are not consistent with this section;

“(5) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

“(6) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

“(7) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan under paragraph (6); and

“(8) require the bank to make an annual report to the Secretary on its status no later than September 30, 1996, and September 30, 1997, and to make such other reports as the Secretary may require by guidelines.

“(f) LIMITATION ON REPAYMENTS.—Notwithstanding any other provision of law, the repayment of a loan or other assistance provided from an infrastructure bank under this section may not be credited towards the non-Federal share of the cost of any project.

“(g) SECRETARIAL REQUIREMENTS.—In administering this section, the Secretary shall—

“(1) ensure that Federal disbursements shall be at a rate consistent with historic rates for the Federal-aid highway program and the Federal transit program, respectively;

“(2) issue guidelines to ensure that all requirements of title 23, United States Code, or title 49, United States Code, that would otherwise apply to funds made available under such title and projects assisted with such funds apply to—

“(A) funds made available under such title and contributed to an infrastructure bank established under this section; and

“(B) projects assisted by the bank through the use of such funds;

except to the extent that the Secretary determines that any requirement of such title is not consistent with the objectives of this section; and

“(3) specify procedures and guidelines for establishing, operating, and providing assistance from the bank.

“(h) UNITED STATES NOT OBLIGATED.—The contribution of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

“(i) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31, United States Code, shall not apply to funds contributed under this section.

“(j) PROGRAM ADMINISTRATION.—For each of fiscal years 1996 and 1997, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

“(k) SECRETARIAL REVIEW.—The Secretary shall review the financial condition of each infrastructure bank established under this section and transmit to Congress a report on the results of such review not later than March 1, 1997. In addition, the report shall contain—

“(1) an evaluation of the pilot program conducted under this section and the ability of such program to increase public investment and attract non-Federal capital; and

“(2) recommendations of the Secretary as to whether the program should be expanded or made a part of the Federal-aid highway and transit programs.

“(l) DEFINITIONS.—In this section, the following definitions apply:

“(1) CAPITAL PROJECT.—The term ‘capital project’ has the meaning such term has under section 5302 of title 49, United States Code.

“(2) CONSTRUCTION; FEDERAL-AID HIGHWAY.—The terms ‘construction’ and ‘Federal-aid highway’ have the meanings such terms have under section 101 of title 23, United States Code.

“(3) OTHER ASSISTANCE.—The term ‘other assistance’ includes any use of funds in an infrastructure bank—

“(A) to provide credit enhancements;

“(B) to serve as a capital reserve for bond or debt instrument financing;

“(C) to subsidize interest rates;

“(D) to ensure the issuance of letters of credit and credit instruments;

“(E) to finance purchase and lease agreements with respect to transit projects;

“(F) to provide bond or debt financing instrument security; and

“(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

“(4) STATE.—The term ‘State’ has the meaning such term has under section 101 of title 23, United States Code.”

§ 602. Determination of eligibility and project selection

(a) ELIGIBILITY.—To be eligible to receive financial assistance under this chapter, a project shall meet the following criteria:

(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary, shall submit a project application to the Secretary.

(3) ELIGIBLE PROJECT COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i) \$50,000,000; or

(ii) 33⅓ percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$15,000,000.

(4) DEDICATED REVENUE SOURCES.—The Federal credit instrument shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the project obligations.

(5) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraphs (1) and (2).

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility requirements specified in subsection (a).

(2) SELECTION CRITERIA.—

(A) IN GENERAL.—The selection criteria shall include the following:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(ii) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(iii) The extent to which assistance under this chapter would foster innovative public-private partnerships and attract private debt or equity investment.

(iv) The likelihood that assistance under this chapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(v) The extent to which the project uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project.

(vi) The amount of budget authority required to fund the Federal credit instrument made available under this chapter.

(vii) The extent to which the project helps maintain or protect the environment.

(viii) The extent to which assistance under this chapter and chapter 1 would reduce the contribution of Federal grant assistance to the project.

(B) PRELIMINARY RATING OPINION LETTER.—For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicat-