

(2) to the maximum extent practicable, shall not be used for the construction of physical surface transportation infrastructure unless the construction is incidental and critically necessary to the implementation of an intelligent transportation system project.

(Added Pub. L. 114-94, div. A, title VI, § 6010(a), Dec. 4, 2015, 129 Stat. 1567.)

#### EFFECTIVE DATE

Section effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

### CHAPTER 6—INFRASTRUCTURE FINANCE

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#### 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.—The following definitions apply to sections 601 through 609:

(1) CONTINGENT COMMITMENT.—The term “contingent commitment” means a commitment to obligate an amount from future available budget authority that is—

- (A) contingent on those funds being made available in law at a future date; and
- (B) not an obligation of the Federal Government.

(2) 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 relating to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment;
- (C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction; and
- (D) capitalizing a rural projects fund.

(3) FEDERAL CREDIT INSTRUMENT.—The term “Federal credit instrument” means a secured loan, loan guarantee, or line of credit authorized to be made available under the TIFIA program with respect to a project.

(4) 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.

(5) 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.

(6) LETTER OF INTEREST.—The term “letter of interest” means a letter submitted by a potential applicant prior to an application for credit assistance in a format prescribed by the Secretary on the website of the TIFIA program that—

- (A) describes the project and the location, purpose, and cost of the project;
- (B) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor;
- (C) provides a status of environmental review; and
- (D) provides information regarding satisfaction of other eligibility requirements of the TIFIA program.

(7) 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.

(8) LIMITED BUYDOWN.—The term “limited buydown” means, subject to the conditions described in section 603(b)(4)(C), a buydown of the interest rate by the obligor if the interest rate has increased between—

- (A)(i) the date on which a project application acceptable to the Secretary is submitted; or
- (ii) the date on which the Secretary entered into a master credit agreement; and
- (B) the date on which the Secretary executes the Federal credit instrument.

(9) LOAN GUARANTEE.—The term “loan guarantee” means any guarantee or other pledge 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.

(10) MASTER CREDIT AGREEMENT.—The term “master credit agreement” means a conditional agreement to extend credit assistance for a program of related projects secured by a common security pledge covered under section 602(b)(2)(A) or for a single project covered under section 602(b)(2)(B) that does not provide for a current obligation of Federal funds, and that would—

- (A) make contingent commitments of 1 or more secured loans or other Federal credit instruments at future dates, subject to—

(i) the availability of future funds being made available to carry out the TIFIA program; and

(ii) the satisfaction of all of the conditions for the provision of credit assistance under the TIFIA program, including section 603(b)(1);

(B) establish the maximum amounts and general terms and conditions of the secured loans or other Federal credit instruments;

(C) identify the 1 or more dedicated non-Federal revenue sources that will secure the repayment of the secured loans or secured Federal credit instruments;

(D) provide for the obligation of funds for the secured loans or secured Federal credit instruments after all requirements have been met for the projects subject to the master credit agreement, including—

(i) completion of an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) receiving an investment grade rating from a rating agency;

(iii) compliance with such other requirements as are specified under the TIFIA program, including sections 602(c) and 603(b)(1); and

(iv) the availability of funds to carry out the TIFIA program; and

(E) require that contingent commitments result in a financial close and obligation of credit assistance not later than 3 years after the date of entry into the master credit agreement, or release of the commitment, unless otherwise extended by the Secretary.

(11) OBLIGOR.—The term “obligor” means a party that—

(A) is primarily liable for payment of the principal of or interest on a Federal credit instrument; and

(B) may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(12) 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;

(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 by way of direct freight interchange between highway and rail carriers;

(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;

(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; and

(iv) is composed of related highway, surface transportation, transit, rail, or intermodal capital improvement projects eligible for assistance under this section in order to meet the eligible project cost threshold under section 602, by grouping related projects together for that purpose, subject to the condition that the credit assistance for the projects is secured by a common pledge;

(E) a project to improve or construct public infrastructure that is located within walking distance of, and accessible to, a fixed guideway transit facility, passenger rail station, intercity bus station, or intermodal facility, including a transportation, public utility, or capital project described in section 5302(3)(G)(v) of title 49, and related infrastructure; and

(F) the capitalization of a rural projects fund.

(13) 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.

(14) 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 (15 U.S.C. 78c(a))).

(15) RURAL INFRASTRUCTURE PROJECT.—The term “rural infrastructure project” means a surface transportation infrastructure project located in an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.

(16) RURAL PROJECTS FUND.—The term “rural projects fund” means a fund—

(A) established by a State infrastructure bank in accordance with section 610(d)(4);

(B) capitalized with the proceeds of a secured loan made to the bank in accordance with sections 602 and 603; and

(C) for the purpose of making loans to sponsors of rural infrastructure projects in accordance with section 610.

(17) SECURED LOAN.—The term “secured loan” means a direct loan or other debt obli-

gation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

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

(19) STATE INFRASTRUCTURE BANK.—The term “State infrastructure bank” means an infrastructure bank established under section 610.

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

(A) calculated on a net present value basis; and

(B) excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(21) SUBSTANTIAL COMPLETION.—The term “substantial completion” means—

(A) the opening of a project to vehicular or passenger traffic; or

(B) a comparable event, as determined by the Secretary and specified in the credit agreement.

(22) TIFIA PROGRAM.—The term “TIFIA program” means the transportation infrastructure finance and innovation program of the Department established under sections 602 through 609.

(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; Pub. L. 112–141, div. A, title II, §2002, July 6, 2012, 126 Stat. 607; Pub. L. 114–94, div. A, title II, §2001(a), Dec. 4, 2015, 129 Stat. 1439.)

#### REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(5), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(5), is set out in Title 26, Internal Revenue Code.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(10)(D)(i), 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.

The Federal Credit Reform Act of 1990, referred to in subsec. (a)(20)(B), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

#### AMENDMENTS

2015—Subsec. (a). Pub. L. 114–94, §2001(a)(1), in introductory provisions, substituted “The” for “In this

chapter, the” and inserted “to sections 601 through 609” after “apply”.

Subsec. (a)(2)(D). Pub. L. 114–94, §2001(a)(2), added subpar. (D).

Subsec. (a)(3). Pub. L. 114–94, §2001(a)(3), substituted “the TIFIA program” for “this chapter”.

Subsec. (a)(10). Pub. L. 114–94, §2001(a)(4)(A), inserted heading and introductory provisions and struck out former heading and introductory provisions. Prior to amendment, introductory provisions read as follows: “The term ‘master credit agreement’ means an agreement to extend credit assistance for a program of projects secured by a common security pledge (which shall receive an investment grade rating from a rating agency), or for a single project covered under section 602(b)(2) that would—”.

Subsec. (a)(10)(A). Pub. L. 114–94, §2001(a)(4)(B), substituted “subject to—” for “subject to the availability of future funds being made available to carry out this chapter;” and added cls. (i) and (ii).

Subsec. (a)(10)(D)(ii). Pub. L. 114–94, §2001(a)(4)(C)(ii), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (a)(10)(D)(iii). Pub. L. 114–94, §2001(a)(4)(C)(i), (iii), redesignated cl. (ii) as (iii) and substituted “under the TIFIA program, including sections 602(c) and 603(b)(1)” for “in section 602(c)”. Former cl. (iii) redesignated (iv).

Subsec. (a)(10)(D)(iv). Pub. L. 114–94, §2001(a)(4)(C)(i), (iv), redesignated cl. (iii) as (iv) and substituted “the TIFIA program” for “this chapter”.

Subsec. (a)(12)(E), (F). Pub. L. 114–94, §2001(a)(5), added subpars. (E) and (F).

Subsec. (a)(15). Pub. L. 114–94, §2001(a)(6), substituted “means a surface transportation infrastructure project located in an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.” for “means a surface transportation infrastructure project located in any area other than a city with a population of more than 250,000 inhabitants within the city limits.”

Subsec. (a)(16) to (22). Pub. L. 114–94, §2001(a)(7)–(10), added pars. (16) and (19), redesignated former pars. (16), (17), (18), (19), and (20) as pars. (17), (18), (20), (21), and (22), respectively, and inserted “established under sections 602 through 609” after “Department” in par. (22).

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to generally applicable provisions.

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).

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### REGIONAL INFRASTRUCTURE ACCELERATOR DEMONSTRATION PROGRAM

Pub. L. 114–94, div. A, title I, §1441, Dec. 4, 2015, 129 Stat. 1435, provided that:

“(a) IN GENERAL.—The Secretary [of Transportation] shall establish a regional infrastructure demonstration program (referred to in this section as the ‘program’) to assist entities in developing improved infrastructure priorities and financing strategies for the accelerated development of a project that is eligible for funding under the TIFIA program under chapter 6 of title 23, United States Code.

“(b) DESIGNATION OF REGIONAL INFRASTRUCTURE ACCELERATORS.—In carrying out the program, the Secretary may designate regional infrastructure accelerators that will—

“(1) serve a defined geographic area; and

“(2) act as a resource in the geographic area to qualified entities in accordance with this section.

“(c) APPLICATION.—To be eligible for a designation under subsection (b), a proposed regional infrastructure accelerator shall submit to the Secretary a proposal at such time, in such manner, and containing such information as the Secretary may require.

“(d) CRITERIA.—In evaluating a proposal submitted under subsection (c), the Secretary shall consider—

“(1) the need for geographic diversity among regional infrastructure accelerators; and

“(2) the ability of the proposal to promote investment in covered infrastructure projects, which shall include a plan—

“(A) to evaluate and promote innovative financing methods for local projects, including the use of the TIFIA program under chapter 6 of title 23, United States Code;

“(B) to build capacity of State, local, and tribal governments to evaluate and structure projects involving the investment of private capital;

“(C) to provide technical assistance and information on best practices with respect to financing the projects;

“(D) to increase transparency with respect to infrastructure project analysis and using innovative financing for public infrastructure projects;

“(E) to deploy predevelopment capital programs designed to facilitate the creation of a pipeline of infrastructure projects available for investment;

“(F) to bundle smaller-scale and rural projects into larger proposals that may be more attractive for investment; and

“(G) to reduce transaction costs for public project sponsors.

“(e) ANNUAL REPORT.—Not less frequently than once each year, the Secretary shall submit to Congress a report that describes the findings and effectiveness of the program.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program \$12,000,000, of which the Secretary shall use—

“(1) \$11,750,000 for initial grants to regional infrastructure accelerators under subsection (b); and

“(2) \$250,000 for administrative costs of carrying out the program.”

#### 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 [former] paragraphs (1), (3), and (4) of section 104(b) and [former] section 144 of title 23, United States Code, excluding funds set aside under paragraphs (1) and (2) of [former] section 133(d) of such title; and

“(ii) the total amount of funds allocated to the State under [former] 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 [former] 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 [former] 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 [former] 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), except 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 [former] 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, former 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 [former] section 157 of such title and section 1013(c) of such Act [former 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 [former] 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, former 23 U.S.C. 157 note, former 104 note] and attributed to urbanized areas of a State with an urbanized population of over 200,000 under [former] 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 [former] 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 sec-

tion 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.—

(1) IN GENERAL.—A project shall be eligible to receive credit assistance under the TIFIA program if—

(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and

(B) the project meets the criteria described in this subsection.

(2) CREDITWORTHINESS.—

(A) IN GENERAL.—To be eligible for assistance under the TIFIA program, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—

(i) a rate covenant, if applicable;

(ii) adequate coverage requirements to ensure repayment;

(iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and

(iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to clause (iii), if the total amount of the senior debt and the Federal credit instrument is less than \$75,000,000, 1 rating agency

opinion for each of the senior debt and Federal credit instrument shall be sufficient.

(B) SENIOR DEBT.—Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating agencies, unless the credit instrument is for an amount less than \$75,000,000, in which case 1 rating agency opinion shall be sufficient.

(3) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—A 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 the TIFIA program.

(4) 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 that is acceptable to the Secretary.

(5) ELIGIBLE PROJECT COST PARAMETERS.—

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

- (i) \$50,000,000; and
- (ii) 33⅓ percent of the amount of Federal highway funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) EXCEPTIONS.—

(i) INTELLIGENT TRANSPORTATION SYSTEMS.—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.

(ii) TRANSIT-ORIENTED DEVELOPMENT PROJECTS.—In the case of a project described in section 601(a)(12)(E), eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000.

(iii) RURAL PROJECTS.—In the case of a rural infrastructure project or a project capitalizing a rural projects fund, eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000, but not to exceed \$100,000,000.

(iv) LOCAL INFRASTRUCTURE PROJECTS.—Eligible project costs shall be reasonably anticipated to equal or exceed \$10,000,000 in the case of a project or program of projects—

(I) in which the applicant is a local government, public authority, or instrumentality of local government;

(II) located on a facility owned by a local government; or

(III) for which the Secretary determines that a local government is substantially involved in the development of the project.

(6) DEDICATED REVENUE SOURCES.—The applicable Federal credit instrument shall be repayable, in whole or in part, from—

(A) tolls;

(B) user fees;

(C) payments owing to the obligor under a public-private partnership; or

(D) other dedicated revenue sources that also secure or fund the project obligations.

(7) 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 paragraph (3).

(8) APPLICATIONS WHERE OBLIGOR WILL BE IDENTIFIED LATER.—A State, local government, agency or instrumentality of a State or local government, or public authority may submit to the Secretary an application under paragraph (4), under which a private party to a public-private partnership will be—

(A) the obligor; and

(B) identified later through completion of a procurement and selection of the private party.

(9) BENEFICIAL EFFECTS.—The Secretary shall determine that financial assistance for the project under the TIFIA program will—

(A) foster, if appropriate, partnerships that attract public and private investment for the project;

(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

(C) reduce the contribution of Federal grant assistance for the project.

(10) PROJECT READINESS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under the TIFIA program, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by no later than 90 days after the date on which a Federal credit instrument is obligated for the project under the TIFIA program.

(B) RURAL PROJECTS FUND.—In the case of a project capitalizing a rural projects fund, the State infrastructure bank shall demonstrate, not later than 2 years after the date on which a secured loan is obligated for the project under the TIFIA program, that the bank has executed a loan agreement with a borrower for a rural infrastructure project in accordance with section 610. After the demonstration is made, the bank may draw upon the secured loan. At the end of the 2-year period, to the extent the bank has not used the loan commitment, the Secretary may extend the term of the loan or withdraw the loan commitment.

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available

to cover the subsidy costs associated with the Federal credit instrument.

(2) MASTER CREDIT AGREEMENTS.—

(A) PROGRAM OF RELATED PROJECTS.—The Secretary may enter into a master credit agreement for a program of related projects secured by a common security pledge on terms acceptable to the Secretary.

(B) ADEQUATE FUNDING NOT AVAILABLE.—If the Secretary fully obligates funding to eligible projects for a fiscal year and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait to execute a credit instrument until the fiscal year for which additional funds are available to receive credit assistance.

(3) PRELIMINARY RATING OPINION LETTER.—The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency—

(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

(B) including a preliminary rating opinion on the Federal credit instrument.

(c) FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under the TIFIA program and projects assisted with those funds:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(2) NEPA.—No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) APPLICATION PROCESSING PROCEDURES.—

(1) NOTICE OF COMPLETE APPLICATION.—Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice to inform the applicant whether—

(A) the application is complete; or

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

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

(e) DEVELOPMENT PHASE ACTIVITIES.—Any credit instrument secured under the TIFIA pro-

gram may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 243, §182; renumbered §602 and amended Pub. L. 109-59, title I, §§1601(b), (c), 1602(b)(2), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 611; Pub. L. 114-94, div. A, title II, §2001(b), Dec. 4, 2015, 129 Stat. 1440.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c)(1)(A), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1)(B), (2), 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.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (c)(1)(C), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, and which is classified principally to chapter 61 (§4601 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 4601 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (a)(1), (2)(A), (3). Pub. L. 114-94, §2001(b)(1)(A)–(C), substituted “the TIFIA program” for “this chapter”.

Subsec. (a)(5). Pub. L. 114-94, §2001(b)(1)(D)(i), substituted “ELIGIBLE PROJECT COST PARAMETERS” for “ELIGIBLE PROJECT COSTS” in heading.

Subsec. (a)(5)(A). Pub. L. 114-94, §2001(b)(1)(D)(ii)(I), substituted “subparagraph (B), a project under the TIFIA program” for “subparagraph (B), to be eligible for assistance under this chapter, a project” in introductory provisions.

Subsec. (a)(5)(A)(i). Pub. L. 114-94, §2001(b)(1)(D)(ii)(II), added cl. (i) and struck out former cl. (i) which read as follows:

“(I) \$50,000,000; or

“(II) in the case of a rural infrastructure project, \$25,000,000; and”.

Subsec. (a)(5)(A)(ii). Pub. L. 114-94, §2001(b)(1)(D)(ii)(III), struck out “assistance” after “highway”.

Subsec. (a)(5)(B). Pub. L. 114-94, §2001(b)(1)(D)(iii), substituted “EXCEPTIONS” for “INTELLIGENT TRANSPORTATION SYSTEM PROJECTS” in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cls. (ii) to (iv).

Subsec. (a)(9). Pub. L. 114-94, §2001(b)(1)(E), substituted “the TIFIA program” for “this chapter” in introductory provisions.

Subsec. (a)(10). Pub. L. 114-94, §2001(b)(1)(F), designated existing provisions as subpar. (A), inserted subpar. (A) heading, substituted “Except as provided in subparagraph (B), to be eligible” for “To be eligible”, “the TIFIA program” for “this chapter” in two places, and “no later than” for “not later than”, and added subpar. (B).

Subsec. (b)(2). Pub. L. 114-94, §2001(b)(2), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of—

“(A) the following fiscal year; and  
 “(B) the fiscal year during which additional funds are available to receive credit assistance.”

Subsecs. (c)(1), (e). Pub. L. 114-94, § 2001(b)(3), (4), substituted “the TIFIA program” for “this chapter”.

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to determination of eligibility and project selection, consisting of subsecs. (a) to (c).

2005—Pub. L. 109-59, § 1602(d), renumbered section 182 of this title as this section.

Subsec. (a). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(1). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter”.

Pub. L. 109-59, § 1601(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “The project—

“(A) shall be included in the State transportation plan required under section 135; and

“(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.”

Subsec. (a)(2). Pub. L. 109-59, § 1601(b)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary.”

Subsec. (a)(3)(A). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

Subsec. (a)(3)(A)(i). Pub. L. 109-59, § 1601(b)(2), substituted “\$50,000,000” for “\$100,000,000”.

Subsec. (a)(3)(A)(ii). Pub. L. 109-59, § 1601(b)(3), substituted “33 $\frac{1}{3}$ ” for “50”.

Subsec. (a)(3)(B). Pub. L. 109-59, § 1601(b)(4), substituted “\$15,000,000” for “\$30,000,000”.

Subsec. (a)(4). Pub. L. 109-59, § 1601(b)(5), substituted “The Federal credit instrument” for “Project financing” and inserted “that also secure the project obligations” before period at end.

Subsec. (b)(1). Pub. L. 109-59, § 1601(c)(1), substituted “eligibility requirements” for “eligibility criteria”.

Subsec. (b)(2)(A)(iii), (iv), (vi). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (b)(2)(A)(viii). Pub. L. 109-59, § 1602(b)(2), inserted “and chapter 1” after “this chapter”.

Subsec. (b)(2)(B). Pub. L. 109-59, § 1601(c)(2), inserted “, which may be the Federal credit instrument,” after “obligations”.

Subsec. (c). Pub. L. 109-59, § 1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 603. Secured loans

#### (a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 602;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;

(C) to refinance existing Federal credit instruments for rural infrastructure projects; or

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

(i) is selected under section 602; or

(ii) otherwise meets the requirements of section 602.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B)—

(A) if the maturity of such interim construction financing is later than 1 year after the substantial completion of the project; and

(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

#### (b) TERMS AND LIMITATIONS.—

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

#### (2) MAXIMUM AMOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

(B) RURAL PROJECTS FUND.—In the case of a project capitalizing a rural projects fund, the maximum amount of a secured loan made to a State infrastructure bank shall be determined in accordance with section 602(a)(5)(B)(iii).

(3) PAYMENT.—A secured loan under this section—

#### (A) shall—

(i) be payable, in whole or in part, from—

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership;

(IV) other dedicated revenue sources that also secure the senior project obligations; or

(V) in the case of a secured loan for a project capitalizing a rural projects fund, any other dedicated revenue

- sources available to a State infrastructure bank, including repayments from loans made by the bank for rural infrastructure projects; and
- (ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and
- (B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.
- (4) INTEREST RATE.—
- (A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the interest rate on a secured 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.
- (B) RURAL INFRASTRUCTURE PROJECTS.—
- (i) IN GENERAL.—The interest rate of a loan offered to a rural infrastructure project or a rural projects fund under the TIFIA program shall be at ½ of the Treasury Rate in effect on the date of execution of the loan agreement.
- (ii) APPLICATION.—The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects and rural project funds under section 608(a)(3)(A).
- (C) LIMITED BUYDOWNS.—The interest rate of a secured loan under this section may not be lowered by more than the lower of—
- (i) 1½ percentage points (150 basis points); or
- (ii) the amount of the increase in the interest rate.
- (5) MATURITY DATE.—
- (A) IN GENERAL.—Except as provided in subparagraph (B), the final maturity date of the secured loan shall be the lesser of—
- (i) 35 years after the date of substantial completion of the project; and
- (ii) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.
- (B) RURAL PROJECTS FUND.—In the case of a project capitalizing a rural projects fund, the final maturity date of the secured loan shall not exceed 35 years after the date on which the secured loan is obligated.
- (6) NONSUBORDINATION.—
- (A) IN GENERAL.—Except as provided in subparagraph (B), the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.
- (B) PREEXISTING INDENTURE.—
- (i) IN GENERAL.—The Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—
- (I) the secured loan is rated in the A category or higher;

- (II) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and
- (III) the TIFIA program share of eligible project costs is 33 percent or less.

(ii) LIMITATION.—If the Secretary waives the nonsubordination requirement under this subparagraph—

(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

(II) the obligor shall be responsible for paying the remainder of the subsidy cost, if any.

(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under the TIFIA program may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(9) MAXIMUM FEDERAL INVOLVEMENT.—

(A) IN GENERAL.—The total Federal assistance provided for a project receiving a loan under the TIFIA program shall not exceed 80 percent of the total project cost.

(B) RURAL PROJECTS FUND.—A project capitalizing a rural projects fund shall satisfy subparagraph (A) through compliance with the Federal share requirement described in section 610(e)(3)(B).

(c) REPAYMENT.—

(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on—

- (A) the projected cash flow from project revenues and other repayment sources; and
- (B) the useful life of the project.

(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

(3) DEFERRED PAYMENTS.—

(A) IN GENERAL.—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

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

- (i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and
- (ii) be scheduled to be amortized over the remaining term of the loan.

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contin-

gent on the project meeting criteria established by the Secretary.

(ii) REPAYMENT STANDARDS.—The criteria established pursuant to clause (i) shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured 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 secured loan without penalty.

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

(d) SALE OF SECURED LOANS.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be 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 written consent of the obligor.

(e) LOAN GUARANTEES.—

(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan under this section if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) TERMS.—The terms of a loan guarantee under paragraph (1) shall be consistent with the terms required under this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

(f) STREAMLINED APPLICATION PROCESS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the FAST Act, the Secretary shall make available an expedited application process or processes available at the request of entities seeking secured loans under the TIFIA program that use a set or sets of conventional terms established pursuant to this section.

(2) TERMS.—In establishing the streamlined application process required by this subsection, the Secretary may include terms commonly included in prior credit agreements and allow for an expedited application period, including—

(A) the secured loan is in an amount of not greater than \$100,000,000;

(B) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge, tax increment financing, or

a system-backed pledge of project revenues; and

(C) repayment of the loan commences not later than 5 years after disbursement.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 245, §183; renumbered §603 and amended Pub. L. 109-59, title I, §§1601(d), 1602(b)(3), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 614; Pub. L. 114-94, div. A, title II, §2001(c), Dec. 4, 2015, 129 Stat. 1442.)

REFERENCES IN TEXT

The date of enactment of the FAST Act, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 114-94, which was approved Dec. 4, 2015.

AMENDMENTS

2015—Subsec. (a)(2). Pub. L. 114-94, §2001(c)(1), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.”

Subsec. (b)(2). Pub. L. 114-94, §2001(c)(2)(A), designated existing provisions as subpar. (A), inserted subpar. (A) heading, substituted “Except as provided in subparagraph (B), the amount of” for “The amount of”, and added subpar. (B).

Subsec. (b)(3)(A)(i)(V). Pub. L. 114-94, §2001(c)(2)(B), added subcl. (V).

Subsec. (b)(4)(B)(i). Pub. L. 114-94, §2001(c)(2)(C)(i), substituted “or a rural projects fund under the TIFIA program” for “under this chapter”.

Subsec. (b)(4)(B)(ii). Pub. L. 114-94, §2001(c)(2)(C)(ii), inserted “and rural project funds” after “rural infrastructure projects”.

Subsec. (b)(5). Pub. L. 114-94, §2001(c)(2)(D), designated existing provisions as subpar. (A) and inserted heading, substituted “Except as provided in subparagraph (B), the final” for “The final”, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (b)(8). Pub. L. 114-94, §2001(c)(2)(E), substituted “the TIFIA program” for “this chapter”.

Subsec. (b)(9). Pub. L. 114-94, §2001(c)(2)(F), designated existing provisions as subpar. (A) and inserted heading, substituted “The total Federal assistance provided for a project receiving a loan under the TIFIA program” for “The total Federal assistance provided on a project receiving a loan under this chapter”, and added subpar. (B).

Subsec. (f). Pub. L. 114-94, §2001(c)(3), added subsec. (f).

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to secured loans.

2005—Pub. L. 109-59, §1602(d), renumbered section 183 of this title as this section.

Subsec. (a)(1). Pub. L. 109-59, §1601(d)(1), in subpars. (A) and (B) inserted “of any project selected under section 602” after “costs”, added subpar. (C), and struck out concluding provisions which read as follows: “of any project selected under section 182.”

Subsec. (a)(3). Pub. L. 109-59, §1602(b)(3), substituted “602(b)(2)(B)” for “182(b)(2)(B)”.

Subsec. (a)(4). Pub. L. 109-59, §1601(d)(2), substituted “The execution” for “The funding” and struck out before period at end “, except that—

“(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

“(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have received an investment-grade rating by at least 1 rating agency”.

Subsec. (b)(2). Pub. L. 109-59, §1601(d)(3)(A), inserted “the lesser of” before “33 percent” and “or, if the se-

cured loan does not receive an investment grade rating, the amount of the senior project obligations” before period at end.

Subsec. (b)(3)(A)(i). Pub. L. 109-59, §1601(d)(3)(B), inserted “that also secure the senior project obligations” after “sources”.

Subsec. (b)(4). Pub. L. 109-59, §1601(d)(3)(C), struck out “marketable” before “United States Treasury securities”.

Subsec. (b)(8). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (c)(3) to (5). Pub. L. 109-59, §1601(d)(4), redesignated pars. (4) and (5) as (3) and (4), respectively, in par. (3)(A), struck out “during the 10 years” after “at any time”, in par. (3)(B)(ii), substituted “loan” for “loan beginning not later than 10 years after the date of substantial completion of the project in accordance with paragraph (1)”, and struck out heading and text of former par. (3). Text read as follows: “The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.”

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 604. Lines of credit

#### (a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available to 1 or more obligors lines of credit in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(3), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account the rating opinion letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the senior obligations of the project receiving an investment-grade rating from 2 rating agencies.

#### (b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) MAXIMUM AMOUNTS.—The total amount of a line of credit under this section shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(3) DRAWS.—Any draw on a line of credit under this section shall—

(A) represent a direct loan; and

(B) be made only if net revenues from the project (including capitalized interest, but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—Except as provided in subparagraphs (B) and (C) of section 603(b)(4), the interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities, as of the date of execution of the line of credit agreement.

(5) SECURITY.—A line of credit issued under this section—

(A) shall—

(i) be payable, in whole or in part, from—

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

(IV) other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(6) PERIOD OF AVAILABILITY.—The full amount of a line of credit under this section, to the extent not drawn upon, shall be available during the 10-year period beginning on the date of substantial completion of the project.

(7) RIGHTS OF THIRD-PARTY CREDITORS.—

(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on a line of credit under this section.

(B) ASSIGNMENT.—An obligor may assign a line of credit under this section to—

(i) 1 or more lenders; or

(ii) a trustee on the behalf of such a lender.

(8) NONSUBORDINATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a direct loan 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.

(B) PRE-EXISTING INDENTURE.—

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

(I) the line of credit is rated in the A category or higher;

(II) the TIFIA program loan resulting from a draw on the line of credit is payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

(III) the TIFIA program share of eligible project costs is 33 percent or less.

(ii) LIMITATION.—If the Secretary waives the nonsubordination requirement under this subparagraph—

(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 603 in an amount that, combined with the amount of the line of credit, exceeds 49 percent of eligible project costs.

(c) REPAYMENT.—

(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on—

(A) the projected cash flow from project revenues and other repayment sources; and

(B) the useful life of the asset being financed.

(2) TIMING.—All repayments of principal or interest on a direct loan under this section shall be scheduled—

(A) to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6); and

(B) to conclude, with full repayment of principal and interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 247, §184; renumbered §604 and amended Pub. L. 109-59, title I, §§1601(e), 1602(b)(4), (d), Aug. 10, 2005, 119 Stat. 1241, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 617.)

#### AMENDMENTS

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to lines of credit.

2005—Pub. L. 109-59, §1602(d), renumbered section 184 of this title as this section.

Subsec. (a)(1). Pub. L. 109-59, §1602(b)(4)(A), substituted “602” for “182”.

Subsec. (a)(3). Pub. L. 109-59, §1602(b)(4)(B), substituted “602(b)(2)(B)” for “182(b)(2)(B)”.

Subsec. (b)(2). Pub. L. 109-59, §1601(e)(1)(A), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

“(A) TOTAL AMOUNT.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

“(B) 1-YEAR DRAWS.—The amount drawn in any 1 year shall not exceed 20 percent of the total amount of the line of credit.”

Subsec. (b)(3). Pub. L. 109-59, §1601(e)(1)(B), substituted “but not including reasonably required financing reserves” for “, any debt service reserve fund, and any other available reserve”.

Subsec. (b)(4). Pub. L. 109-59, §1601(e)(1)(C), struck out “marketable” before “United States Treasury securities” and substituted “date of execution of the line of credit agreement” for “date on which the line of credit is obligated”.

Subsec. (b)(5)(A)(i). Pub. L. 109-59, §1601(e)(1)(D), inserted “that also secure the senior project obligations” after “sources”.

Subsec. (b)(6). Pub. L. 109-59, §1601(e)(1)(E), substituted “The full amount of the line of credit, to the extent not drawn upon,” for “The line of credit”.

Subsec. (b)(10). Pub. L. 109-59, §1602(b)(4)(C), substituted “603” for “183”.

Subsec. (c)(2). Pub. L. 109-59, §1601(e)(2)(A), struck out “scheduled” before “repayments”, inserted “be scheduled to” after “shall”, and substituted “to conclude, with full repayment of principal and interest,” for “be fully repaid, with interest,”.

Subsec. (c)(3). Pub. L. 109-59, §1601(e)(2)(B), struck out heading and text of par. (3). Text read as follows: “The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.”

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 605. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under the TIFIA program.

(b) FEES.—The Secretary may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover—

(1) the costs of services of expert firms retained pursuant to subsection (d); and

(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

(c) SERVICER.—

(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

(2) DUTIES.—A servicer appointed under paragraph (1) shall act as the agent for the Secretary.

(3) FEE.—A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary.

(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

(e) EXPEDITED PROCESSING.—The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance under the TIFIA program.

(f) ASSISTANCE TO SMALL PROJECTS.—

(1) RESERVATION OF FUNDS.—Of the funds made available to carry out the TIFIA pro-

gram for each fiscal year, and after the set aside under section 608(a)(5), not less than \$2,000,000 shall be made available for the Secretary to use in lieu of fees collected under subsection (b) for projects under the TIFIA program having eligible project costs that are reasonably anticipated not to equal or exceed \$75,000,000.

(2) **RELEASE OF FUNDS.**—Any funds not used under paragraph (1) in a fiscal year shall be made available on October 1 of the following fiscal year to provide credit assistance to any project under the TIFIA program.

(Added Pub. L. 105–178, title I, §1503(a), June 9, 1998, 112 Stat. 249, §185; renumbered §605 and amended Pub. L. 109–59, title I, §§1601(f), 1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1241, 1247; Pub. L. 112–141, div. A, title II, §2002, July 6, 2012, 126 Stat. 619; Pub. L. 114–94, div. A, title II, §2001(d), Dec. 4, 2015, 129 Stat. 1443.)

#### AMENDMENTS

2015—Subsecs. (a), (e). Pub. L. 114–94, §2001(d)(1), substituted “the TIFIA program” for “this chapter”.

Subsec. (f). Pub. L. 114–94, §2001(d)(2), added subsec. (f).

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to program administration, consisting of subsecs. (a) to (d).

2005—Pub. L. 109–59, §1602(d), renumbered section 185 of this title as this section.

Pub. L. 109–59, §1601(f), amended section catchline and text generally, substituting provisions relating to establishment by the Secretary of a uniform system to service the Federal credit instruments made available under this subchapter for provisions authorizing a State to identify a local servicer to assist the Secretary in servicing the Federal credit instrument made available under this subchapter.

Subsec. (a). Pub. L. 109–59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 606. State and local permits

The provision of credit assistance under the TIFIA program with respect to a project shall not—

(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

(Added Pub. L. 105–178, title I, §1503(a), June 9, 1998, 112 Stat. 249, §186; renumbered §606 and amended Pub. L. 109–59, title I, §1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1247; Pub. L. 112–141, div.

A, title II, §2002, July 6, 2012, 126 Stat. 620; Pub. L. 114–94, div. A, title II, §2001(e), Dec. 4, 2015, 129 Stat. 1444.)

#### AMENDMENTS

2015—Pub. L. 114–94 substituted “the TIFIA program” for “this chapter” in introductory provisions.

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section read as follows: “The provision of financial assistance under this chapter with respect to a project shall not—

“(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

“(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

“(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.”

2005—Pub. L. 109–59, §1602(d), renumbered section 186 of this title as this section.

Pub. L. 109–59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 607. Regulations

The Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out the TIFIA program.

(Added Pub. L. 105–178, title I, §1503(a), June 9, 1998, 112 Stat. 249, §187; renumbered §607 and amended Pub. L. 109–59, title I, §1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1247; Pub. L. 112–141, div. A, title II, §2002, July 6, 2012, 126 Stat. 620; Pub. L. 114–94, div. A, title II, §2001(f), Dec. 4, 2015, 129 Stat. 1444.)

#### AMENDMENTS

2015—Pub. L. 114–94 substituted “the TIFIA program” for “this chapter”.

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section read as follows: “The Secretary may issue such regulations as the Secretary determines appropriate to carry out this chapter.”

2005—Pub. L. 109–59, §1602(d), renumbered section 187 of this title as this section.

Pub. L. 109–59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 608. Funding

(a) **FUNDING.**—

(1) SPENDING AND BORROWING AUTHORITY.—Spending and borrowing authority for a fiscal year to enter into Federal credit instruments shall be promptly apportioned to the Secretary on a fiscal-year basis.

(2) REESTIMATES.—If the subsidy cost of a Federal credit instrument is reestimated, the cost increase or decrease of the reestimate shall be borne by, or benefit, the general fund of the Treasury, consistent with section 504(f) of the Congressional Budget Act of 1974 (2 U.S.C. 661c(f)).

(3) RURAL SET-ASIDE.—

(A) IN GENERAL.—Of the total amount of funds made available to carry out the TIFIA program for each fiscal year, not more than 10 percent shall be set aside for rural infrastructure projects or rural projects funds.

(B) REOBLIGATION.—Any amounts set aside under subparagraph (A) that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects or rural projects funds.

(4) AVAILABILITY.—Amounts made available to carry out the TIFIA program shall remain available until expended.

(5) ADMINISTRATIVE COSTS.—Of the amounts made available to carry out the TIFIA program, the Secretary may use not more than \$6,875,000 for fiscal year 2016, \$7,081,000 for fiscal year 2017, \$7,559,000 for fiscal year 2018, \$8,195,000 for fiscal year 2019, and \$8,441,000 for fiscal year 2020 for the administration of the TIFIA program.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, execution of a term sheet by the Secretary of a Federal credit instrument that uses amounts made available under the TIFIA program shall impose on the United States a contractual obligation to fund the Federal credit investment.

(2) AVAILABILITY.—Amounts made available to carry out the TIFIA program for a fiscal year shall be available for obligation on October 1 of the fiscal year.

(Added and amended Pub. L. 105–178, title I, §1503(a), (c), June 9, 1998, 112 Stat. 249, §188; Pub. L. 105–206, title IX, §9007(a), July 22, 1998, 112 Stat. 849; Pub. L. 108–88, §5(a)(10), Sept. 30, 2003, 117 Stat. 1115; Pub. L. 108–202, §5(a)(10), Feb. 29, 2004, 118 Stat. 481; Pub. L. 108–224, §4(a)(10), Apr. 30, 2004, 118 Stat. 629; Pub. L. 108–263, §4(a)(10), June 30, 2004, 118 Stat. 700; Pub. L. 108–280, §4(a)(10), July 30, 2004, 118 Stat. 879; Pub. L. 108–310, §5(a)(10), Sept. 30, 2004, 118 Stat. 1149; Pub. L. 109–14, §4(a)(10), May 31, 2005, 119 Stat. 327; Pub. L. 109–20, §4(a)(10), July 1, 2005, 119 Stat. 348; Pub. L. 109–35, §4(a)(10), July 20, 2005, 119 Stat. 381; Pub. L. 109–37, §4(a)(10), July 22, 2005, 119 Stat. 396; Pub. L. 109–40, §4(a)(10), July 28, 2005, 119 Stat. 413; renumbered §608 and amended Pub. L. 109–59, title I, §§1601(g), 1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1242, 1247; Pub. L. 112–141, div. A, title II, §2002, July 6, 2012, 126 Stat. 620; Pub. L. 114–94, div. A, title II, §2001(g), Dec. 4, 2015, 129 Stat. 1444.)

AMENDMENTS

2015—Pub. L. 114–94, §2001(g)(1), substituted “the TIFIA program” for “this chapter” wherever appearing.

Subsec. (a)(2). Pub. L. 114–94, §2001(g)(2)(A), inserted “of” after “504(f)”.

Subsec. (a)(3)(A), (B). Pub. L. 114–94, §2001(g)(2)(B), inserted “or rural projects funds” after “rural infrastructure projects”.

Subsec. (a)(4). Pub. L. 114–94, §2001(g)(2)(C), redesignated par. (5) as (4) and struck out former par. (4) which related to redistribution of authorized funding.

Subsec. (a)(5). Pub. L. 114–94, §2001(g)(2)(D), added par. (5). Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 114–94, §2001(g)(2)(C), struck out par. (6). Text read as follows: “Of the amounts made available to carry out this chapter, the Secretary may use not more than 0.50 percent for each fiscal year for the administration of this chapter.”

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to funding for fiscal years 2005 through 2009 and contract authority.

2005—Pub. L. 109–59, §1602(d), renumbered section 188 of this title as this section.

Pub. L. 109–59, §1601(g), reenacted section catchline without change and amended text generally, substituting provisions relating to funding for fiscal years 2005 through 2009 and contract authority, consisting of subsecs. (a) and (b), for provisions relating to funding for fiscal years 1999 through 2004 and for the period of Oct. 1, 2004, through July 30, 2005, contract authority, and limitations on credit amounts, consisting of subsecs. (a) to (c).

Subsec. (a)(1). Pub. L. 109–59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (a)(1)(G). Pub. L. 109–40, §4(a)(10)(A), added subpar. (G) and struck out former subpar. (G) which read as follows: “\$106,849,340 for the period of October 1, 2004, through July 27, 2005.”

Pub. L. 109–37, §4(a)(10)(A), added subpar. (G) and struck out former subpar. (G) which read as follows: “\$105,300,000 for the period of October 1, 2004, through July 21, 2005.”

Pub. L. 109–35, §4(a)(10)(A), added subpar. (G) and struck out former subpar. (G) which read as follows: “\$104,000,000 for the period of October 1, 2004, through July 19, 2005.”

Pub. L. 109–20, §4(a)(10)(A), added subpar. (G) and struck out former subpar. (G) which read as follows: “\$97,500,000 for the period of October 1, 2004, through June 30, 2005.”

Pub. L. 109–14, §4(a)(10)(A), added subpar. (G) and struck out former subpar. (G) which read as follows: “\$86,666,667 for the period of October 1, 2004, through May 31, 2005.”

Subsec. (a)(2). Pub. L. 109–40, §4(a)(10)(B), substituted “\$1,660,000 for the period of October 1, 2004, through July 30, 2005” for “\$1,643,836 for the period of October 1, 2004, through July 27, 2005”.

Pub. L. 109–37, §4(a)(10)(B), substituted “\$1,643,836 for the period of October 1, 2004, through July 27, 2005” for “\$1,620,000 for the period of October 1, 2004, through July 21, 2005”.

Pub. L. 109–35, §4(a)(10)(B), substituted “\$1,620,000 for the period of October 1, 2004, through July 21, 2005” for “\$1,600,000 for the period of October 1, 2004, through July 19, 2005”.

Pub. L. 109–20, §4(a)(10)(B), substituted “\$1,600,000 for the period of October 1, 2004, through July 19, 2005” for “\$1,500,000 for the period of October 1, 2004, through June 30, 2005”.

Pub. L. 109–14, §4(a)(10)(B), substituted “\$1,500,000 for the period of October 1, 2004, through June 30, 2005” for “\$1,333,333 for the period of October 1, 2004, through May 31, 2005”.

Subsec. (a)(3). Pub. L. 109–59, §1602(b)(5), substituted “administration of this chapter” for “administration of this subchapter”.

Subsec. (b)(1). Pub. L. 109–59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (c). Pub. L. 109-40, §4(a)(10)(C), substituted “\$2,158,000,000” for “\$2,136,986,800” in item relating to fiscal year 2005 in table.

Pub. L. 109-37, §4(a)(10)(C), substituted “\$2,136,986,800” for “\$2,106,000,000” in item relating to fiscal year 2005 in table.

Pub. L. 109-35, §4(a)(10)(C), substituted “\$2,106,000,000” for “\$2,080,000,000” in item relating to fiscal year 2005 in table.

Pub. L. 109-20, §4(a)(10)(C), substituted “\$2,080,000,000” for “\$1,950,000,000” in item relating to fiscal year 2005 in table.

Pub. L. 109-14, §4(a)(10)(C), substituted “\$1,950,000,000” for “\$1,733,333,333” in item relating to fiscal year 2005 in table.

2004—Subsec. (a)(1)(F). Pub. L. 108-280, §4(a)(10)(A), added subpar. (F) and struck out former subpar. (F) which read as follows: “\$116,666,667 for the period of October 1, 2003, through July 31, 2004.”

Pub. L. 108-263, §4(a)(10)(A), added subpar. (F) and struck out former subpar. (F) which read as follows: “\$105,000,000 for the period of October 1, 2003, through June 30, 2004.”

Pub. L. 108-224, §4(a)(10)(A), added subpar. (F) and struck out former subpar. (F) which read as follows: “\$81,666,666 for the period of October 1, 2003, through April 30, 2004.”

Pub. L. 108-202, §5(a)(10)(A), added subpar. (F) and struck out former subpar. (F) which read as follows: “\$58,333,333 for the period of October 1, 2003, through February 29, 2004.”

Subsec. (a)(1)(G). Pub. L. 108-310, §5(a)(10)(A), added subpar. (G).

Subsec. (a)(2). Pub. L. 108-310, §5(a)(10)(B), inserted “and \$1,333,333 for the period of October 1, 2004, through May 31, 2005” before period at end.

Pub. L. 108-280, §4(a)(10)(B), struck out “2003 and \$1,666,667 for the period of October 1, 2003, through July 31,” before “2004.”

Pub. L. 108-263, §4(a)(10)(B), substituted “\$1,666,667 for the period of October 1, 2003, through July 31, 2004” for “\$1,500,000 for the period of October 1, 2003, through June 30, 2004”.

Pub. L. 108-224, §4(a)(10)(B), substituted “\$1,500,000 for the period of October 1, 2003, through June 30, 2004” for “\$1,166,667 for the period of October 1, 2003, through April 30, 2004”.

Pub. L. 108-202, §5(a)(10)(B), substituted “\$1,166,667 for the period of October 1, 2003, through April 30, 2004” for “\$833,333 for the period of October 1, 2003, through February 29, 2004”.

Subsec. (c). Pub. L. 108-310, §5(a)(10)(C), substituted “2005” for “2004” in introductory provisions and inserted item in table relating to fiscal year 2005.

Pub. L. 108-280, §4(a)(10)(C), substituted “\$2,600,000,000” for “\$2,166,666,667” in item relating to fiscal year 2004 in table.

Pub. L. 108-263, §4(a)(10)(C), substituted “\$2,166,666,667” for “\$1,950,000,000” in item relating to fiscal year 2004 in table.

Pub. L. 108-224, §4(a)(10)(C), substituted “\$1,950,000,000” for “\$1,516,666,667” in item relating to fiscal year 2004 in table.

Pub. L. 108-202, §5(a)(10)(C), substituted “\$1,516,666,667” for “\$1,083,333,333” in item relating to fiscal year 2004 in table.

2003—Subsec. (a)(1)(F). Pub. L. 108-88, §5(a)(10)(A), added subpar. (F).

Subsec. (a)(2). Pub. L. 108-88, §5(a)(10)(B), inserted “and \$833,333 for the period of October 1, 2003, through February 29, 2004” after “2003”.

Subsec. (c). Pub. L. 108-88, §5(a)(10)(C), substituted “2004” for “2003” and inserted item in table relating to fiscal year 2004.

1998—Subsec. (a)(2). Pub. L. 105-178, §1503(c)(1), as added by Pub. L. 105-206, §9007(a), substituted “1999” for “1998”.

Subsec. (c). Pub. L. 105-178, §1503(c)(2), as added by Pub. L. 105-206, §9007(a), substituted “1999” for “1998” in introductory provisions, and substituted table for former table which read as follows:

<b>*Fiscal year:</b>	<b>Maximum amount of credit:</b>
1998 .....	\$1,200,000,000
1999 .....	\$1,200,000,000
2000 .....	\$1,800,000,000
2001 .....	\$1,800,000,000
2002 .....	\$2,300,000,000
2003 .....	\$2,300,000,000.”

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of this title.

**§ 609. Reports to Congress**

(a) IN GENERAL.—On June 1, 2012, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under the TIFIA program, including a recommendation as to whether the objectives of the TIFIA program are best served by—

- (1) continuing the program under the authority of the Secretary;
- (2) establishing a Federal corporation or federally sponsored enterprise to administer the program; or
- (3) phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by the TIFIA program without Federal participation.

(b) APPLICATION PROCESS REPORT.—

(1) IN GENERAL.—Not later than December 1, 2012, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes a list of all of the letters of interest and applications received from project sponsors for assistance under the TIFIA program during the preceding fiscal year.

(2) INCLUSIONS.—

(A) IN GENERAL.—Each report under paragraph (1) shall include, at a minimum, a description of, with respect to each letter of interest and application included in the report—

- (i) the date on which the letter of interest or application was received;
- (ii) the date on which a notification was provided to the project sponsor regarding whether the application was complete or incomplete;
- (iii) the date on which a revised and completed application was submitted (if applicable);

(iv) the date on which a notification was provided to the project sponsor regarding whether the project was approved or disapproved; and

(v) if the project was not approved, the reason for the disapproval.

(B) CORRESPONDENCE.—Each report under paragraph (1) shall include copies of any correspondence provided to the project sponsor in accordance with section 602(d).

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 250, §189; renumbered §609 and amended Pub. L. 109-59, title I, §§1601(h), 1602(d), Aug. 10, 2005, 119 Stat. 1242, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 621; Pub. L. 114-94, div. A, title II, §2001(h), Dec. 4, 2015, 129 Stat. 1444.)

#### AMENDMENTS

2015—Pub. L. 114-94 substituted “the TIFIA program” for “this chapter (other than section 610)” wherever appearing.

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section read as follows: “On June 1, 2006, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this chapter (other than section 610), including a recommendation as to whether the objectives of this chapter (other than section 610) are best served—

“(1) by continuing the program under the authority of the Secretary;

“(2) by establishing a Government corporation or Government-sponsored enterprise to administer the program; or

“(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this chapter (other than section 610) without Federal participation.”

2005—Pub. L. 109-59, §1602(d), renumbered section 189 of this title as this section.

Pub. L. 109-59, §1601(h), substituted “Reports” for “Report” in section catchline, “On June 1, 2006, and every 2 years thereafter,” for “Not later than 4 years after the date of enactment of this subchapter,” in introductory provisions, and “chapter (other than section 610)” for “subchapter” wherever appearing.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 610. State infrastructure bank program

(a) 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.

(2) OTHER FORMS OF CREDIT ASSISTANCE.—The term “other forms of credit 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 insure or guarantee letters of credit and credit instruments against credit risk of loss;

(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.

(3) STATE.—The term “State” has the meaning such term has under section 401.

(4) CAPITALIZATION.—The term “capitalization” means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

(5) COOPERATIVE AGREEMENT.—The term “cooperative agreement” means written consent between a State and the Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

(6) LOAN.—The term “loan” means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(7) GUARANTEE.—The term “guarantee” means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor’s financial obligations for a project under specified conditions.

(8) INITIAL ASSISTANCE.—The term “initial assistance” means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

(9) LEVERAGE.—The term “leverage” means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

(10) LEVERAGED.—The term “leveraged”, as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

(11) RURAL INFRASTRUCTURE PROJECT.—The term “rural infrastructure project” has the meaning given the term in section 601.

(12) RURAL PROJECTS FUND.—The term “rural projects fund” has the meaning given the term in section 601.

(b) COOPERATIVE AGREEMENTS.—Subject to the provisions of this section, the Secretary may enter into cooperative agreements with States for the establishment of State infrastructure banks for making loans and providing other forms of credit assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

(c) INTERSTATE COMPACTS.—

(1) IN GENERAL.—Congress grants consent to two or more of the States, entering into a co-

operative agreement under subsection (a) with the Secretary for the establishment by such States of a multistate infrastructure bank in accordance with this section, to enter into an interstate compact establishing such bank in accordance with this section.

(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) FUNDING.—

(1) HIGHWAY ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed—

(A) 10 percent of the funds apportioned to the State for each of fiscal years 2016 through 2020 under each of paragraphs (1), (2), and (5) of section 104(b); and

(B) 10 percent of the funds allocated to the State for each of such fiscal years.

(2) TRANSIT ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit account of the bank not to exceed 10 percent of the funds made available to the State or other recipient in each of fiscal years 2016 through 2020 for capital projects under each of such sections.

(3) RAIL ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of the bank funds made available to the State or other recipient in each of fiscal years 2016 through 2020 for capital projects under such subtitle.

(4) RURAL PROJECTS FUND.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the rural projects fund of the bank the proceeds of a secured loan made to the bank in accordance with sections 602 and 603.

(5) CAPITAL GRANTS.—

(A) HIGHWAY ACCOUNT.—Federal funds deposited into a highway account of a State infrastructure bank under paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

(B) TRANSIT ACCOUNT.—Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

(C) RAIL ACCOUNT.—Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3 shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

(6) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under section 133(d)(1)(A)(i) 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.

(7) DISCONTINUANCE OF FUNDING.—If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

(e) FORMS OF ASSISTANCE FROM STATE INFRASTRUCTURE BANKS.—

(1) IN GENERAL.—A State infrastructure bank established under this section may—

(A) with funds deposited into the highway account, transit account, or rail account of the bank, make loans or provide other forms of credit assistance to a public or private entity to carry out a project eligible for assistance under this section; and

(B) with funds deposited into the rural projects fund, make loans to a public or private entity to carry out a rural infrastructure project.

(2) SUBORDINATION OF LOAN.—The amount of a loan or other form of credit assistance provided for a project described in paragraph (1) may be subordinated to any other debt financing for the project.

(3) MAXIMUM AMOUNT OF ASSISTANCE.—A State infrastructure bank established under this section may—

(A) with funds deposited into the highway account, transit account, or rail account of the bank, make loans or provide other forms of credit assistance to a public or private entity in an amount up to 100 percent of the cost of carrying out a project eligible for assistance under this section; and

(B) with funds deposited into the rural projects fund, make loans to a public or private entity in an amount not to exceed 80 percent of the cost of carrying out a rural infrastructure project.

(4) INITIAL ASSISTANCE.—Initial assistance provided with respect to a project from Federal funds deposited into a State infrastructure bank under this section may not be made in the form of a grant.

(f) ELIGIBLE PROJECTS.—Subject to subsection (e), funds in an infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under this title and capital projects defined in section 5302 of title 49, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

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

(1) deposit in cash, at a minimum, into the highway account, the transit account, and the

rail 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 deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120(b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;

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

(3) ensure that investment income derived from funds deposited to an account of the bank are—

(A) credited to the account;

(B) available for use in providing loans and other forms of credit 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) 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, except that any loan funded from the rural projects fund of the bank shall bear interest at or below the interest rate charged for the TIFIA loan provided to the bank under section 603;

(5) 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;

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

(7) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.

(h) APPLICABILITY OF FEDERAL LAW.—

(1) IN GENERAL.—The requirements of this title and title 49 that would otherwise apply to funds made available under this title or such title and projects assisted with those funds shall apply to—

(A) funds made available under this title or such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (g); 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 this title and section 5333 of title 49) is not consistent with the objectives of this section.

(2) REPAYMENTS.—The requirements of this title and title 49 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.

(i) UNITED STATES NOT OBLIGATED.—The deposit 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.

(j) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31 shall not apply to funds deposited into an infrastructure bank under this section.

(k) PROGRAM ADMINISTRATION.—For each of fiscal years 2016 through 2020, 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.

(Added Pub. L. 109–59, title I, §1602(a), Aug. 10, 2005, 119 Stat. 1243, §190; renumbered §610, Pub. L. 109–59, title I, §1602(d), Aug. 10, 2005, 119 Stat. 1247, as amended Pub. L. 110–244, title I, §101(f), June 6, 2008, 122 Stat. 1574; Pub. L. 112–141, div. A, title I, §1519(c)(11), formerly §1519(c)(12), July 6, 2012, 126 Stat. 577, renumbered §1519(c)(11), Pub. L. 114–94, div. A, title I, §1446(d)(5)(B), Dec. 4, 2015, 129 Stat. 1438; Pub. L. 114–94, div. A, title II, §2001(i), Dec. 4, 2015, 129 Stat. 1444.)

#### AMENDMENTS

2015—Subsec. (a)(11), (12). Pub. L. 114–94, §2001(i)(1), added pars. (11) and (12).

Subsec. (d)(1)(A). Pub. L. 114–94, §2001(i)(2)(A), substituted “each of fiscal years 2016 through 2020 under each of paragraphs (1), (2), and (5) of section 104(b); and” for “fiscal years 2005 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4), and 144; and”.

Subsec. (d)(1)(B). Pub. L. 114–94, §1446(d)(5)(B), amended Pub. L. 112–141, div. A, title I, §1519(c). See 2012 Amendment note below.

Subsec. (d)(2), (3). Pub. L. 114–94, §2001(i)(2)(B), (C), substituted “fiscal years 2016 through 2020” for “fiscal years 2005 through 2009”.

Subsec. (d)(4) to (7). Pub. L. 114–94, §2001(i)(2)(D)–(F), added par. (4), redesignated former pars. (4) to (6) as (5) to (7), respectively, and substituted “section 133(d)(1)(A)(i)” for “section 133(d)(3)” in par. (6).

Subsec. (e). Pub. L. 114–94, §2001(i)(3), added subsec. (e) and struck out former subsec. (e) which related to forms of assistance from infrastructure banks.

Subsec. (g)(1). Pub. L. 114–94, §2001(i)(4)(A), substituted “the highway account, the transit account, and the rail account” for “each account”.

Subsec. (g)(4). Pub. L. 114–94, §2001(i)(4)(B), inserted “, except that any loan funded from the rural projects fund of the bank shall bear interest at or below the interest rate charged for the TIFIA loan provided to the bank under section 603” after “feasible”.

Subsec. (k). Pub. L. 114–94, §2001(i)(5), substituted “fiscal years 2016 through 2020” for “fiscal years 2005 through 2009”.

2012—Subsec. (d)(1)(B). Pub. L. 112–141, §1519(c)(11), formerly §1519(c)(12), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), struck out “under section 105” before period at end.

2008—Pub. L. 110–244 amended Pub. L. 109–59, §1602(d). See 2005 Amendment note below.

2005—Pub. L. 109–59, as amended by Pub. L. 110–244, renumbered section 190 of this title as this section.

EFFECTIVE DATE OF 2015 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

Pub. L. 114–94, div. A, title I, §1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(5)(B) is effective as of July 6, 2012, and as if included in Pub. L. 112–141 as enacted.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effec-

tive and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–244 effective as of the date of enactment of Pub. L. 109–59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109–59 as of that date, and provisions of Pub. L. 109–59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110–244 to be treated as not enacted, see section 121(b) of Pub. L. 110–244, set out as a note under section 101 of this title.