

EXPLANATION OF H.R. XXXX, TO MAKE TECHNICAL AMENDMENTS TO TITLE 49, UNITED STATES CODE, AS NECESSARY TO IMPROVE THE CODE

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PURPOSE

H.R. xxxx would make amendments to title 49, United States Code, as necessary to improve the Code.

BACKGROUND AND NEED FOR LEGISLATION

H.R. xxxx was prepared by the Office of the Law Revision Counsel of the House of Representatives as part of its responsibility under section 205(c) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b), to prepare and submit periodically to the Committee on the Judiciary proposed bills to maintain titles of the United States Code that have been enacted into positive law.

On November 15, 2021, the Infrastructure Investment and Jobs Act (Public Law 117–58, 135 Stat. 429) was enacted. Within that Act is the Surface Transportation Investment Act of 2021 (Public Law 117–58, div. B, 135 Stat. 682), subtitle C of title I of which inserted a new chapter 224 in title 49 United States Code, within which the text of the provisions of title V of the Railroad Revitalization and Regulatory Reform Act Of 1976 (45 U.S.C. 821 et seq.) was inserted, the text of Section 9003(j) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (45 U.S.C. 822 note) was restated, and a new section authorizing appropriations was added. To maintain the United States Code, certain technical corrections and improvements are needed in that new chapter 224 of title 49, United States Code. Those technical corrections and improvements are made in H.R. xxxx.

SECTION-BY-SECTION ANALYSIS

SECTION 1—TABLE OF CONTENTS

Section 1 of the bill provides a table of contents for the Act.

SECTION 2—PURPOSE

Section 2 of the bill provides that the purpose of the Act is to make technical amendments to title 49, United States Code, as necessary to improve the Code.

SECTION 3—TECHNICAL AMENDMENTS TO CHAPTER 224 OF TITLE 49, UNITED STATES CODE

SECTION 3(a)

Section 3(a) of the bill makes technical amendments to section 22401 of title 49, United States Code.

SECTION 3(b)

Section 3(b) of the bill makes technical amendments to section 22402 of title 49, United States Code.

SECTION 3(c)

Section 3(c) of the bill makes technical amendments to section 22403 of title 49, United States Code.

SECTION 3(d)

Section 3(d) of the bill makes technical amendments to section 22405 of title 49, United States Code.

SECTION 3(e)

Section 3(e) of the bill makes technical amendments to section 22406 of title 49, United States Code.

SECTION 4—OTHER TECHNICAL AMENDMENTS

Section 4 of the bill makes technical amendments to sections 116(d)(1)(B) and 22905(c)(2)(B) of title 49, United States Code, and to section 21303(1) of the Surface Transportation Investment Act of 2021 (49 U.S.C. 22402 note).

In subsection (b), the reference to “section 22402(b)(1)(E) of title 49” in section 21303(1) of the Surface Transportation Investment Act of 2021 (49 U.S.C. 22402 note) is updated to “section 22402(b)(1)(F) of title 49” to correct an error in the law.

CHANGES IN EXISTING LAW MADE BY THE BILL

Set out below is a comparative print showing changes in existing law made by the bill. Insertions are shown in italic and omissions are surrounded by brackets.

TITLE 49—UNITED STATES CODE

* * *

§116. National Surface Transportation and Innovative Finance Bureau

* * *

(d) ADMINISTRATION OF CERTAIN APPLICATION PROCESSES.—

(1) IN GENERAL.—The Bureau shall administer the application processes for the following programs:

* * *

(B) The railroad rehabilitation and improvement financing program authorized under sections 22401 through 22403 of *this title*.

* * *

§22401. Definitions

In this chapter:

(1) COST.—

[(A) The term] (A) *INGENERAL*.—*The term “cost” means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.*

[(B) The cost] (B) *DIRECTLOAN*.—

(i) *INGENERAL*.—*The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:*

[(i)] (I) *Loan disbursements.*

[(ii)] (II) *Repayments of principal.*

[(iii)] (III) *Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.*

[Calculation of the cost of a direct loan] (ii) *INCLUSION*.—*Calculation of the cost of a direct loan shall include the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.*

[(C) The cost] (C) *LOAN GUARANTEE*.—

(i) *INGENERAL*.—*The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:*

[(i)] (I) *Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments.*

[(ii)] (II) *Payments to the Government, including origination and other fees, penalties, and recoveries.*

[Calculation of the cost of a loan guarantee] (ii) *INCLUSION*.—*Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.*

[(D) The cost] (D) *MODIFICATION*.—*The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.*

[(E) In estimating] (E) *NET PRESENT VALUES*.—*In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.*

[(F) When funds] (F) BASIS OF ESTIMATED COST.—When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

(2) CURRENT.—The term “current” has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(9)).

* * *

(12) RAILROAD.—The term “railroad” includes—

(A) any railroad or railroad carrier (as such terms are defined in section 20102 of this title); and

(B) any rail carrier (as defined in section 24102 of this title).

* * *

§22402. Direct loans and loan guarantees

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

* * *

(3) [government sponsored] government-sponsored authorities and corporations;

* * *

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

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

* * *

(f) INFRASTRUCTURE PARTNERS.—

(1) AUTHORITY OF SECRETARY.—In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 504(b)(1) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(b)(1)), including the cost of a modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority thereof, to fund in whole or in part credit risk premiums and modification costs with respect to the loan that is the subject of the application or modification. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

* * *

(5) COHORTS OF LOANS.—Subject to the availability of funds appropriated by Congress under section 22406(a)(2) of this title, for any direct loan issued before the date of enactment of the Fixing

America's Surface Transportation Act [(Public Law 114–94)] (*Public Law 114–94, 129 Stat. 1312*) pursuant to sections 501 through 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 [(Public Law 94–210)] (*Public Law 94–210, 90 Stat. 31*), the Secretary shall repay the credit risk premiums of such loan, with interest accrued thereon, not later than—

(A) 60 days after the date of enactment of the Surface Transportation Investment Act of 2021 (*Public Law 117–58, div. B, 135 Stat. 652*) if the borrower has satisfied all obligations attached to such loan; or

* * *

(7) REPAYMENT OF CREDIT RISK PREMIUMS.—The Secretary shall return credit risk premiums paid, and interest accrued on such premiums, to the original source when all obligations of a loan or loan guarantee have been satisfied. This paragraph applies to any project that has been granted assistance under this section after the date of enactment of the Surface Transportation Investment Act of 2021 (*Public Law 117–58, div. B, 135 Stat. 652*).

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

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

* * *

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

(i) 35 years; and

(ii) the product of—

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

(II) 75 percent[.];

* * *

(h) CONDITIONS OF ASSISTANCE.—

* * *

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

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

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

* * *

(i) APPLICATION PROCESSING PROCEDURES.—

* * *

(3) APPLICATION APPROVALS AND DISAPPROVALS.—

* * *

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

(4) STREAMLINED APPLICATION REVIEW PROCESS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Surface Transportation Investment Act of 2021 (*Public Law 117–58, div. B, 135 Stat. 652*), the Secretary shall implement procedures and measures to economize and make available [an streamlined] *a streamlined* application process or processes at the request of applicants seeking loans or loan guarantees.

* * *

(6) CREDITWORTHINESS REVIEW STATUS.—

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

* * *

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

* * *

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

* * *

§22403. Administration of direct loans and loan guarantees

(a) APPLICATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe the form and contents required of applications for assistance under section 22402 *of this title*, to enable the Secretary to determine the eligibility of the applicant's proposal, and shall establish terms and conditions for direct loans and loan

guarantees made under that section, including a program guide, a standard term sheet, and specific timetables.

* * *

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

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

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

* * *

(3) the modification cost has been covered under section 22402(f) *of this title*.

* * *

(g) DEFAULT.—The Secretary shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 22402 *of this title*. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that—

(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

* * *

(h) RIGHTS OF THE SECRETARY.—

(1) SUBROGATION.—If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) in connection with a loan guarantee made under section 22402 *of this title*, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

* * *

(i) ACTION AGAINST OBLIGOR.—The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 22402 *of this title*, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 22402 *of this title*. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of—

(1) the amount paid to the holder of a guarantee under subsection (g) [of this section]; and

* * *

(m) FEES AND CHARGES.—Except as provided in this chapter, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 22402 *of this title*.

* * *

§22405. Substantive criteria and standards

The Secretary shall—

(1) publish in the Federal Register and post on a website of the Department of Transportation the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 22402 *of this title*; and

* * *

§22406. Authorization of appropriations[.]

(a) AUTHORIZATION.—

* * *

(2) REFUND OF PREMIUM.—There is authorized to be appropriated to the Secretary \$70,000,000 to repay the credit risk premium in accordance with section 22402(f)(5) *of this title*.

* * *

(b) USE OF FUNDS.—

* * *

(2) ADMINISTRATIVE COSTS.—Not less than 3 percent of the amounts appropriated pursuant to subsection (a) in each fiscal year shall be made available to the Secretary for use in place of charges collected under section 22403(1)(1) *of this title* for passenger railroads and freight railroads other than Class I carriers.

* * *

§22905. Grant conditions

* * *

(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this chapter for a project that uses rights-of-way owned by a railroad that—

* * *

(2) the applicant agrees to comply with—

* * *

(B) the protective arrangements that are equivalent to the protective arrangements established under section 22404 *of this title* with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this chapter.

* * *

SURFACE TRANSPORTATION INVESTMENT ACT OF 2021

SEC. 21303. SEMIANNUAL REPORT ON TRANSIT-ORIENTED DEVELOPMENT ELIGIBILITY.

Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that identifies—

- (1) the number of applications submitted to the Department for a direct loan or loan guarantee under [section 22402(b)(1)(E) of title 49] *section 22402(b)(1)(F) of title 49*, United States Code, as amended by section 21301;

* * *