

§ 3906. Activities eligible for assistance

For purposes of this chapter, an eligible activity with respect to an eligible project includes the cost of—

- (1) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;
- (2) construction, reconstruction, rehabilitation, and replacement activities;
- (3) the acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation (including acquisitions pursuant to section 3905(8) of this title), construction contingencies, and acquisition of equipment; and
- (4) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(Pub. L. 113-121, title V, § 5027, June 10, 2014, 128 Stat. 1335; Pub. L. 114-322, title IV, § 5008(b)(2)(C), Dec. 16, 2016, 130 Stat. 1897.)

Editorial Notes**AMENDMENTS**

2016—Par. (3). Pub. L. 114-322 substituted “section 3905(8)” for “section 3905(7)”.

§ 3907. Determination of eligibility and project selection**(a) Eligibility requirements**

To be eligible to receive financial assistance under this chapter, a project shall meet the following criteria, as determined by the Secretary or Administrator, as applicable:

(1) Creditworthiness**(A) In general**

The project and obligor shall be creditworthy, which shall be determined by the Secretary or the Administrator, as applicable.

(B) Considerations

In determining the creditworthiness of a project and obligor, the Secretary or the Administrator, as applicable, shall take into consideration relevant factors, including—

- (i) the terms, conditions, financial structure, and security features of the proposed financing;
- (ii) the dedicated revenue sources that will secure or fund the project obligations;
- (iii) the financial assumptions upon which the project is based; and
- (iv) the financial soundness and credit history of the obligor.

(C) Security features

The Secretary or the Administrator, as applicable, shall ensure that any financing for the project has appropriate security features, such as a rate covenant, supporting the project obligations to ensure repayment.

(D) Rating opinion letters**(i) Preliminary rating opinion letter**

The Secretary or the Administrator, as applicable, shall require each project applicant to provide, at the time of application, a preliminary rating opinion letter from at least 1 rating agency indicating that the senior obligations of the project (which may be the Federal credit instrument) have the potential to achieve an investment-grade rating.

(ii) Final rating opinion letters

The Secretary or the Administrator, as applicable, shall require each project applicant to provide, prior to final acceptance and financing of the project, a final rating opinion letter from at least 1 rating agency indicating that the senior obligations of the project have an investment-grade rating.

(E) Special rule for certain combined projects

The Administrator shall develop a credit evaluation process for a Federal credit instrument provided to—

(i) a State infrastructure financing authority for a project under section 3905(9) of this title, which may include requiring the provision of a final rating opinion letter from at least one rating agency; or

(ii) an entity for a project under section 3905(10) of this title, which may include requiring the provision of a final rating opinion letter from at least two rating agencies.

(2) Eligible project costs**(A) In general**

Subject to subparagraph (B), the eligible project costs of a project shall be reasonably anticipated to be not less than \$20,000,000.

(B) Small community water infrastructure projects

For a project described in paragraph (2) or (3) of section 3905 of this title that serves a community of not more than 25,000 individuals, the eligible project costs of a project shall be reasonably anticipated to be not less than \$5,000,000.

(3) Dedicated revenue sources

The Federal credit instrument for the project shall be repayable, in whole or in part, from dedicated revenue sources that also secure the project obligations.

(4) Public sponsorship of private entities**(A) In general**

If an eligible project is carried out by an entity that is not a State or local government or an agency or instrumentality of a State or local government or a tribal government or consortium of tribal governments, the project shall be publicly sponsored.

(B) Public sponsorship

For purposes of this chapter, a project shall be considered to be publicly sponsored