

title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

The Federal Credit Reform Act of 1990, referred to in par. (13), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, 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.

#### SHORT TITLE

Pub. L. 113-121, title V, §5021, June 10, 2014, 128 Stat. 1332, provided that: “This subtitle [subtitle C (§§5021-5035) of title V of Pub. L. 113-121, enacting this chapter] may be cited as the ‘Water Infrastructure Finance and Innovation Act of 2014’.”

#### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

### § 3902. Authority to provide assistance

#### (a) In general

The Secretary and the Administrator may provide financial assistance under this chapter to carry out pilot projects, which shall be selected to ensure a diversity of project types and geographical locations.

#### (b) Responsibility

##### (1) Secretary

The Secretary shall carry out all pilot projects under this chapter that are eligible projects under section 3905(1) of this title.

##### (2) Administrator

The Administrator shall carry out all pilot projects under this chapter that are eligible projects under paragraphs (2), (3), (4), (5), (6), and (8) of section 3905 of this title.

##### (3) Other projects

The Secretary or the Administrator, as applicable, may carry out eligible projects under paragraph (7) or (9) of section 3905 of this title.

(Pub. L. 113-121, title V, §5023, June 10, 2014, 128 Stat. 1333.)

#### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

### § 3903. Applications

#### (a) In general

To receive assistance under this chapter, an eligible entity shall submit to the Secretary or the Administrator, as applicable, an application at such time, in such manner, and containing such information as the Secretary or the Administrator may require.

#### (b) Combined projects

In the case of an eligible project described in paragraph (8) or (9) of section 3905 of this title, the Secretary or the Administrator, as applicable, shall require the eligible entity to submit a single application for the combined group of projects.

(Pub. L. 113-121, title V, §5024, June 10, 2014, 128 Stat. 1333.)

#### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113-121, set out as a note under section 2201 of this title.

### § 3904. Eligible entities

The following entities are eligible to receive assistance under this chapter:

- (1) A corporation.
- (2) A partnership.
- (3) A joint venture.
- (4) A trust.
- (5) A Federal, State, or local governmental entity, agency, or instrumentality.
- (6) A tribal government or consortium of tribal governments.
- (7) A State infrastructure financing authority.

(Pub. L. 113-121, title V, §5025, June 10, 2014, 128 Stat. 1334.)

### § 3905. Projects eligible for assistance

The following projects may be carried out with amounts made available under this chapter:

- (1) Any project for flood damage reduction, hurricane and storm damage reduction, environmental restoration, coastal or inland harbor navigation improvement, or inland and intracoastal waterways navigation improvement that the Secretary determines is technically sound, economically justified, and environmentally acceptable, including—

(A) a project to reduce flood damage;

(B) a project to restore aquatic ecosystems;

(C) a project to improve the inland and intracoastal waterways navigation system of the United States; and

(D) a project to improve navigation of a coastal or inland harbor of the United States, including channel deepening and construction of associated general navigation features.

(2) 1 or more activities that are eligible for assistance under section 1383(c) of this title, notwithstanding the public ownership requirement under paragraph (1) of that subsection.

(3) 1 or more activities described in section 300j-12(a)(2) of title 42.

(4) A project for enhanced energy efficiency in the operation of a public water system or a publicly owned treatment works.

(5) A project for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or waste collection facility (including a facility that serves a population or community of an Indian reservation).

(6) A brackish or sea water desalination project, a managed aquifer recharge project, or a water recycling project.

(7) Acquisition of real property or an interest in real property—

(A) if the acquisition is integral to a project described in paragraphs (1) through (6); or

(B) pursuant to an existing plan that, in the judgment of the Administrator or the

Secretary, as applicable, would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for assistance under this section.

(8) A combination of projects, each of which is eligible under paragraph (2) or (3), for which a State infrastructure financing authority submits to the Administrator a single application.

(9) A combination of projects secured by a common security pledge, each of which is eligible under paragraph (1), (2), (3), (4), (5), (6), or (7), for which an eligible entity, or a combination of eligible entities, submits a single application.

(Pub. L. 113–121, title V, § 5026, June 10, 2014, 128 Stat. 1334.)

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

**§ 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 pre-construction 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(7) 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.)

**§ 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, final rating opinion letters from at least 2 rating agencies 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 a State infrastructure financing authority for a project under section 3905(8) of this title or an entity 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 2 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 govern-