



# WIFIA PROGRAM

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## FEDERAL REQUIREMENTS

JANUARY 9, 2020



# OPPORTUNITY FOR QUESTIONS

- **NO AUDIO?** → Call +1 (631) 992-3221 and enter access code 293-124-835
- **QUESTIONS?** → Type your question into the webinar dashboard. Participants are muted during the webinar and may only communicate by typing.
- Unanswered questions will be answered in a follow-up e-mail or through the FAQ



# AGENDA



## INTRODUCTION

*Dan-Tam Nguyen*



## ENVIRONMENTAL AUTHORITIES

*Alaina McCurdy*



## OTHER FEDERAL REQUIREMENTS

*Dan-Tam Nguyen*



## CONCLUSION

*Dan-Tam Nguyen*



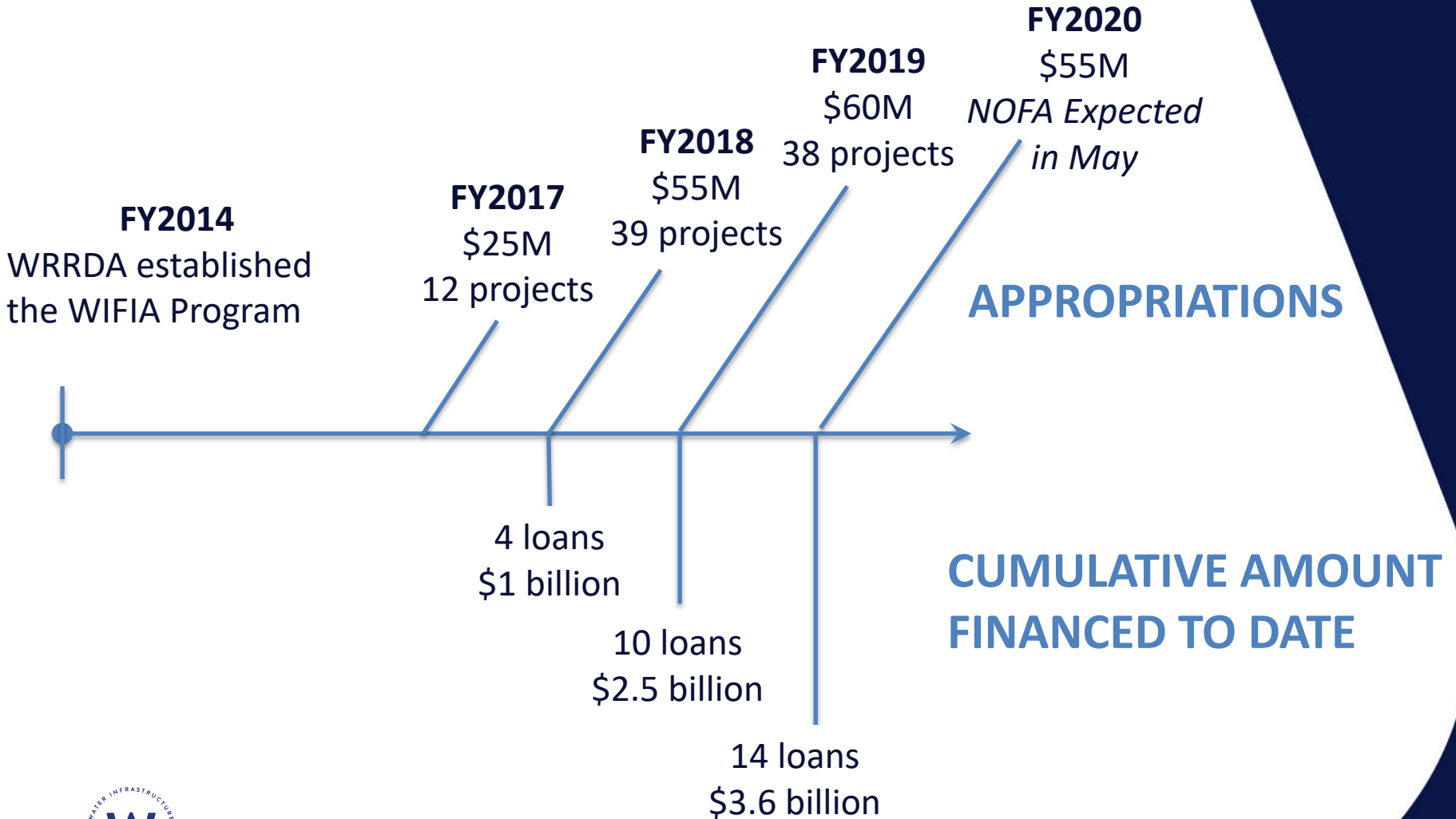
## QUESTION & ANSWER SESSION



# INTRODUCTION



# WIFIA PROGRAM HISTORY



# MISSION STATEMENT

The Water Infrastructure Finance and Innovation Act (WIFIA) program accelerates investment in our nation's water and wastewater infrastructure by providing long-term, low-cost, supplemental credit assistance under customized terms to creditworthy water and wastewater projects of national and regional significance.



# ELIGIBLE BORROWERS, PROJECTS, AND COSTS



- Local, state, tribal and federal government entities
- Partnerships and joint ventures
- Corporations and trusts
- Clean Water and Drinking Water State Revolving Fund (SRF) programs



- Clean Water and Drinking Water SRF projects
- Enhanced energy efficiency projects at drinking water and wastewater facilities
- Brackish or seawater desalination, aquifer recharge, alternative water supply and water recycling projects
- Drought prevention, reduction or mitigation projects



- Land Acquisition
- Development Phase and Construction Costs
- Capitalized Interest and Loan Closing fees



# FEDERAL REQUIREMENTS



**Borrowers receiving a WIFIA loan must comply with all relevant federal laws and regulations**

Some Examples:

## **ENVIRONMENTAL AUTHORITIES**

- National Environmental Policy Act (NEPA)
- National Historic Preservation Act
- Archeological and Historic Preservation Act
- Endangered Species Act
- Clean Water Act/ Clean Air Act
- Safe Drinking Water Act
- Environmental Justice
- Costal Barrier Act
- Coastal Zone Management Act

## **ECONOMIC AND MISCELLANEOUS AUTHORITIES**

- Debarment and Suspension
- Anti-lobbying
- Uniform Relocation Act

## **CIVIL RIGHTS, NONDISCRIMINATION , EEO AUTHORITIES**

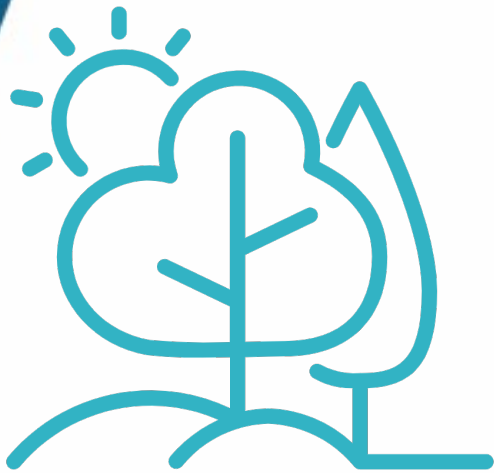
- Civil Rights Acts
- Rehabilitation Act
- Equal Employment Opportunity
- Disadvantaged Business Enterprises

## **AMERICAL IRON AND STEEL (AIS) LABOR LAWS AND STANDARDS**

*Non-exhaustive list available at 40 CFR Part 35 Subpart Q*







# ENVIRONMENTAL AUTHORITIES



# NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

- Mandates that Federal agencies consider the effects of their actions, including programs, regulations, policies, and grant-funded specific projects, on the quality of the human environment.
- NEPA requirements do not apply at the letter of interest stage, and therefore compliance with NEPA is not a prerequisite for submitting a letter of interest.
- During the project review stage, each proposed WIFIA project must be assessed for its impact on the environment under the guidelines set forth by the NEPA. EPA will not obligate funds for a loan prior to completing its NEPA review.



# NEPA DETERMINATION

## Assesses potential environmental impacts of the project

- Every project must receive an environmental Categorical Exclusion (CATEX), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) prior to obligation
- Prospective borrowers are encouraged to submit any and all available documents and findings with their application.

Examples include:

- Other environmental reviews (CEQA, SERP, USACE, NEPA)
- Consultations (NHPA, ESA)
- Maps illustrating scope of project, NEPAassist
- Biological, cultural, archaeological assessments
- PEIR, EIS, EA Reports

*Resources:*

NEPAassist: <https://www.epa.gov/nepa/nepassist>



# PROGRAMMATIC ENVIRONMENTAL ASSESSMENT

Analyzes the potential environmental impacts of water infrastructure projects eligible for WIFIA credit assistance

- Presents nationwide information on existing conditions
- Discusses potential impacts and mitigation measures that might typically occur during construction and operation of broad project types
- Provides mechanisms to evaluate site specific conditions and impacts for individual projects, and to determine if projects impacts fall within the PEA scope
- Does not require an additional public comment period

*Resources:*

WIFIA PEA: <https://cdxnodengn.epa.gov/cdx-enepa-ii/public/action/nepa/details?nepaId=248581>



# PROGRAMMATIC ENVIRONMENTAL ASSESSMENT

## What qualifies under the PEA?

- WIFIA credit assistance projects qualify for coverage under this PEA when:
  - The impacts of their projects are within the scope of those considered in Section 4 of the PEA;
  - Proper supporting documentation is provided, and;
  - A memorandum to the record is developed by EPA using the PEA questionnaire for WIFIA credit assistance projects in appendix A or questionnaire for WIFIA credit assistance SRF programs in appendix B.

<https://www.epa.gov/wifia/wifia-programmatic-environmental-assessment-questionnaires>



# STATE REVOLVING FUNDS AND WIFIA FOR ENV REVIEW

- The SRFs and WIFIA have similar environmental compliance requirements
- The programs work in tandem to complete the needed environmental reviews; NHPA, ESA
- The SRFs and WIFIA each make their own NEPA determination
- The WIFIA env review can occur before, after, or concurrently with the SRF review
- The same supporting documentation from the applicant can be used for both reviews



# ADDITIONAL NOTES ON SOME ENVIRONMENTAL CROSS-CUTTERS



# ENVIRONMENTAL JUSTICE

## EXECUTIVE ORDER 12898

Ensures that no group of people bear a disproportionate share of any negative environmental consequences

- Evaluation should address the following concerns:
  - Whether there exists a potential for disproportionate risk
  - Whether communities have been sufficiently involved in the decision-making process
  - Whether communities currently suffer, or have historically suffered, from environmental and health risks or hazards
- Factors used in the evaluation can include: demographic, economic, human health and risk, cultural/ethnic differences

*Resources:*

*EPA Environmental Justice Screening and Mapping Tool:* <https://ejscreen.epa.gov/mapper>

*Environmental Justice Guidance:* <https://www.epa.gov/nepa/environmental-justice-guidance-national-environmental-policy-act-reviews>





# NATIONAL HISTORIC PRESERVATION ACT

Protects historic and archeological resources from adverse impacts

- Includes districts, sites, buildings, structures and objects listed in or eligible for listing in the National Register of Historic Places
- Consultation process with State Historic Preservation Officer, Tribal Historic Preservation Officers and other interested parties
- If historic properties are present, effects must be assessed and mitigated
- Consultation process must be completed prior to obligation and finalizing NEPA decision

*Resources:*

*General information and National Historic Sites Listings:* <https://www.nps.gov/nhl/find/statelists.htm>

*State Historic Preservation Office Contacts:* <http://ncshpo.org/directory/>



# ENDANGERED SPECIES ACT

## Protects endangered and threatened species along with their critical habitats

- Consultation Process with U.S. Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Service
- Prohibits "taking," e.g., harming (including, in some cases, habitat modification), harassing, or killing, endangered, and most threatened, animal species, without prior authorization
- Consultation process must be completed prior to obligation and finalizing NEPA decision

### *Resources:*

*General Information on Federally designated endangered and threatened species and endangered and threatened species lists by State:* <https://www.fws.gov/endangered/>



# ENV COMPLIANCE TIPS

## Tips for providing thorough env materials

- Develop a clear project description that outlines all subcomponents or subprojects
- Provide detailed location descriptions for all project components
- Provide detailed and clear maps of all project components
- Organize your information
- Provide all existing environmental documentation
  - Docs developed for or submitted to SRF
  - Appendices
  - Technical reports
  - Consultation letters



# FREQUENTLY ASKED QUESTIONS

## Other Environmental FAQs

- When does the environmental compliance process take place?
- What needs to occur prior to closing?
- Who is responsible for what? EPA vs WIFIA borrower
- Does the borrower need to have the environmental review completed to come in with an application?
- How long does the review take?





# OTHER FEDERAL REQUIREMENTS



# WIFIA REVIEW OF FEDERAL REQUIREMENTS

The WIFIA program checks for compliance with federal requirements at all stages of a project.

- When you submit a letter of interest (LOI), minimal checking occurs. We do ask you to acknowledge that you are aware of the federal requirements of a federal loan with the WIFIA Program.
- When you are applying for a loan, we'll delve into federal requirements together. The level of checks will vary based on what phase the project is in. Examples of checks conducted:
  - Sample contract language if no active contract is available.
  - Review of executed contracts.
  - Eligibility and allocability of previously incurred costs.
- Post-loan closing – Periodic oversight for compliance, including contract review for federal requirements language, other document review, site visits.



# HOW TO COMPLY?

## Communication is key.

- Consider all the relevant parties that must comply with the requirement. Some federal requirements only apply to the borrower, whereas other requirements trickle down to subcontractors or suppliers/distributors.
- WIFIA federal requirements language or borrower equivalent need to be in contracts. Yes, even for collaborative delivery contracts.
- If you don't know, ask.
- Show proof of implementation beyond the contracts.



# AMERICAN IRON AND STEEL (AIS)

- *This requirement is specifically mentioned in the WIFIA statute.*
- Similar to SRF programs, this provision requires the use of primarily iron and steel products used on federally funded projects to be produced in the U.S.
- Where products are not readily available, a waiver may be requested through the WIFIA program.
- To ensure compliance, documentation is required in the form of product certifications and project waivers.
- Monitored during site visits and during other compliance monitoring activities.

*Resources:*

*AIS requirements:* <https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>





# DAVIS BACON AND RELATED ACTS (DBRA)

- *This requirement is specifically mentioned in the WIFIA statute.*
- Similar to SRF programs, this act requires the minimum payment of locally prevailing wage and fringe benefits to laborers and mechanics.
- The borrower is required to maintain records during construction and at least three years after.
- Monitored during site visits and during other compliance monitoring activities.

## *Resources:*

*Department of Labor's Davis-Bacon Overview:*

<https://www.dol.gov/whd/govcontracts/dbra.htm>



# CIVIL RIGHTS, NONDISCRIMINATION, EEO AUTHORITIES

- In general, these are fairly standard requirements and are generally expected even if the language is not specific or only cited in contracts.
- Equal Employment Opportunity (EO11246) has required language that is needed in contracts. We would check this either at application or post-loan closing.
- Prior to closing, the borrower must complete a Civil Rights Pre-Award Compliance Form (EPA 4700-4).
- Signage may be monitored during site visits.



# ECONOMIC AND MISCELLANEOUS AUTHORITIES

- Debarment and Suspension – As the federal lender, EPA has the responsibility to check on debarment and suspension status prior to issuing loans. The borrower is also responsible for checking that prime contractors are not debarred or suspended (and that these checks occur for subcontractors too).
- Restriction on Lobbying – EPA requires the borrower to check during application review and certify prior to closing using EPA Form 6600-06.
- Uniform Relocation Act – Land acquisition activities that are part of the project may subject the borrower to this Act.





# CONCLUSION

# OUTREACH OPPORTUNITIES

## SRF AIS Training for States and Borrowers

January 23, 2020 at 1:00-3:00 pm Eastern Time

Registration is available at

<https://attendee.gotowebinar.com/register/6234983399009586434>

## Financing a Program of Projects

March 17, 2020 at 2:00-3:30 pm Eastern Time

Registration is available at

<https://register.gotowebinar.com/register/6324458357253137411>

## EPA will meet with all prospective borrowers interested in discussing the program

Send requests to [wifia@epa.gov](mailto:wifia@epa.gov)



# RESOURCES

## General information

<https://www.epa.gov/wifia/learn-about-wifia-program>

- Program overview; links to laws and regulations; frequently asked questions

## How to Apply

<https://www.epa.gov/wifia/how-apply-wifia-assistance-0>

- NOFA, Letter of interest form, FAQ, and checklist; sample financial pro forma; sample letter of interest

## Resources

<https://www.epa.gov/wifia/wifia-resources>

- Program handbook; template term sheet; learning module; information session registration; federal requirements



# FY2020 APPROPRIATION

## EPA will have approximately \$5.5 billion available for WIFIA loans

Congress provided \$55 million in budget divided into two parts:

- \$5 million for approximately \$500 million in loans exclusively to State infrastructure financing authority borrowers
- \$50 million for approximately \$5 billion in loans to all eligible borrowers under the WIFIA base program

EPA expects to publish the NOFA in May 2020





# QUESTION & ANSWER SESSION





# CONTACT US

Website: [www.epa.gov/wifia](http://www.epa.gov/wifia)

Email: [wifia@epa.gov](mailto:wifia@epa.gov)

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