

The Administrator, Michael S. Regan, signed the following Notice of Funding Availability (NOFA) on September 6, 2023, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the NOFA, it is not the official version. Please refer to the official version in a forthcoming FR publication (<https://www.federalregister.gov/>). Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL 11258-01-OW]

Notice of Funding Availability for Credit Assistance under the Water Infrastructure Finance and Innovation Act (WIFIA) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: The purpose of this notice of funding availability (NOFA) is to solicit letters of interest (LOIs) from prospective borrowers seeking credit assistance from the U.S. Environmental Protection Agency (EPA) under the Water Infrastructure Finance and Innovation Act (WIFIA) program. EPA estimates that it may lend approximately \$6.5 billion to help finance approximately \$13 billion in water infrastructure investment.

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DATES: As of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], this document replaces the 2022 NOFA published in the Federal Register at 87 FR 36489, June 17, 2022.

ADDRESSES: Prospective borrowers should submit all LOIs electronically via EPA's SharePoint site. To be granted access to the SharePoint site, prospective borrowers should contact *wifia@epa.gov* and request a link to the SharePoint site, where they can securely upload their LOIs and then email *wifia@epa.gov* once the complete LOI package has been uploaded to the SharePoint site. EPA will notify prospective borrowers that their LOI has been received via a confirmation email.

Prospective borrowers can access additional information, including the WIFIA program handbook and application materials, on the WIFIA website:

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

FOR FURTHER INFORMATION CONTACT: Dallas Shattuck, Office of Water, Environmental Protection Agency; telephone number: (202) 564-0972; or email: *shattuck.dallas@epa.gov* (preferred).

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I. Background

Congress enacted WIFIA as part of the Water Resources Reform and Development Act of 2014 (WRRDA). Codified at 33 U.S.C. 3901-3915, WIFIA authorizes a Federal credit program for water infrastructure projects to be administered by EPA. WIFIA authorizes EPA to provide Federal credit assistance in the form of secured (direct) loans or loan guarantees for eligible water infrastructure projects.

The WIFIA program's mission is to accelerate investment in our nation's water, wastewater, and stormwater infrastructure by providing long-term, low-cost, supplemental credit assistance under customized terms to creditworthy water infrastructure projects of national and regional significance. Additionally, the WIFIA program is implementing five key Administration priorities in this 2023 NOFA:

A. Increasing Investment in Economically Stressed Communities

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EPA encourages the submission of projects that address the ever-increasing needs of economically stressed and disadvantaged communities to ensure they benefit from investments in water infrastructure, and therefore improve the public health and livability of these communities.

B. Making Rapid Progress on Lead Service Line Replacement

Many drinking water systems still have lead service lines. EPA encourages the submission of drinking water infrastructure projects that will help make rapid progress on replacing lead service lines to reduce exposure to lead and improve public health. There is no safe level of lead in drinking water. Full lead service line replacement can be an effective method to reduce drinking water lead levels. Because of this, WIFIA-funded projects involving lead service line replacement should include a plan, strategy, and/or approach to comply with EPA policy on lead service line replacement.

C. Addressing PFAS and Emerging Contaminants

EPA encourages the submission of projects that focus on reducing exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through drinking water and/or projects that help address discharges of emerging contaminants from wastewater and/or stormwater systems.

D. Mitigating the Impacts of Drought

EPA supports long-term strategies to conserve water, promote water efficiency and reuse, and protect and diversify communities' sources of water. Taken together, these efforts can help communities address water quantity concerns and reduce their reliance

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on single sources for drinking water. Due to the WIFIA program’s broad range of eligible projects, EPA can finance projects such as aquifer storage and recovery, water reuse, green infrastructure, stormwater diversion and storage, water loss audits, meter replacement, groundwater replenishment, and nature-based solutions.

E. Supporting One Water Innovation and Resilience

One of the defining features of WIFIA is the broad range of eligible projects that EPA can fund to flexibly support priority needs. EPA encourages borrowers to submit applications for water infrastructure projects that are new and innovative in regards to energy efficiency, addressing drought, or reducing water pollution and contaminants. In addition, EPA encourages the submission of water infrastructure projects that are more resilient to all threats—whether it is natural disasters, climate change, or threats such as bioterrorism and cyber-attacks.

II. Program Funding

A. WIFIA Program Appropriation

In the Consolidated Appropriations Act, 2023, signed by the President on December 29, 2022, Congress appropriated \$63 million in funding to cover the subsidy cost of providing WIFIA credit assistance. EPA estimates that this appropriation will allow the Agency to provide approximately \$6.5 billion¹ in long-term, low-cost financing

¹ This estimated loan volume is provided for reference only. Consistent with the Federal Credit Reform Act of 1990 and the requirements of the Office of Management and Budget, the actual subsidy cost of providing credit assistance is based on individual project characteristics and calculated on a project-by-project basis. Thus, actual lending capacity may vary.

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to water infrastructure projects and accelerate approximately \$13 billion in infrastructure investment around the country.

B. Funding Availability Period

LOIs may be submitted by prospective borrowers and will be reviewed by EPA on a rolling basis. LOIs shall be submitted using the LOI form found at <https://www.epa.gov/wifia>. LOIs will be reviewed based on the scoring guide applicable at the time of submission. The publication of this NOFA does not impact LOIs previously submitted to EPA, which continue to be reviewed based on the applicable requirements at the time of submission.

This NOFA replaces the 2022 NOFA published in the Federal Register at 87 FR 36489, June 17, 2022, as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This NOFA provides guidance on all WIFIA funding authority available including funding from previous years. Any funding authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

III. Eligibility Requirements

The WIFIA statute and implementing rules provide eligibility requirements for prospective borrowers, projects, and project costs. In general, the WIFIA program can provide loans to public and private borrowers for a wide variety of water infrastructure projects. Detailed information on WIFIA eligibility requirements for prospective

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borrowers, projects, and project costs can be found in the WIFIA program handbook at <https://www.epa.gov/wifia/wifia-program-handbook>.

A. Eligible Applicants

Prospective borrowers must be an eligible entity to receive WIFIA credit assistance. Eligible entities include: corporations, partnerships, joint ventures and trusts; state, local, and tribal governments; and state infrastructure financing authorities.

Public sponsorship is required for projects undertaken by an entity that is not a state or local government or agency or instrumentality of a state or local government, or a tribal government or consortium of tribal governments.

B. Eligible Projects

The WIFIA statute authorizes EPA to provide credit assistance for a wide variety of creditworthy drinking water, wastewater, and stormwater infrastructure projects. The non-exhaustive list below includes several examples of projects eligible for WIFIA credit assistance. For detailed project eligibility information, review the WIFIA program handbook at <https://www.epa.gov/wifia/wifia-program-handbook>.

- A wide range of wastewater, stormwater, and nonpoint source projects that are eligible under the Clean Water State Revolving Fund (CWSRF). More detailed CWSRF eligibility information can be found at <https://www.epa.gov/cwsrf>;

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- A wide range of drinking water infrastructure projects – including treatment, transmission and distribution, source, storage, consolidation/partnerships, and the creation of new systems – that are eligible under the Drinking Water State Revolving Fund (DWSRF). More detailed DWSRF eligibility information can be found at <https://www.epa.gov/dwsrf>;
- Repair, rehabilitation, or replacement of drinking water, wastewater, or stormwater infrastructure;
- Energy efficiency enhancements for a public water system or publicly owned treatment works;
- Desalination, aquifer storage and recovery, water recycling, or other projects to provide an alternative water supply and reduce aquifer depletion;
- Drought prevention, reduction, or mitigation projects;
- Acquisition of real property or an interest in real property, in certain circumstances;
- A combination of drinking water and wastewater projects submitted by a State infrastructure financing authority; and
- A combination of eligible projects, secured by a common security pledge, for which a single entity, or a combination of eligible entities, submits a single application.

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C. Eligible Costs

Eligible project costs are costs associated with the following activities:

- (i) 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;
- (ii) Construction, reconstruction, rehabilitation, and replacement activities;
- (iii) 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, construction contingencies and acquisition of equipment;
- (iv) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction. Capitalized interest on WIFIA credit assistance may not be included as an eligible project cost.

IV. Budgetary Scoring Determination for Non-Federal Projects

To comply with Public Law 116-260, a project selected for WIFIA financing using funding appropriated in FY2023 will be assessed using two initial screening questions and sixteen scoring factors. These questions will help the Office of Management and Budget (OMB) determine compliance with budgetary scoring rules, a process that will be conducted in parallel to EPA's LOI evaluation process outlined in

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this NOFA. The questions may be found in *Federal Register* publication: Water Infrastructure Finance and Innovation Act Program (WIFIA) Criteria Pursuant to the Further Consolidated Appropriations Act, 2020 (85 FR 39189, June 30, 2020). These questions are also published in the WIFIA program handbook and further information about the scoring process may be referenced therein. EPA encourages project applicants to review the scoring criteria and provide sufficient information in the LOI or as an attachment to the LOI to facilitate EPA and OMB review of the prospective project considering the scoring criteria.

V. Type and Amount of Credit Assistance

Under this NOFA, EPA will provide credit assistance in the form of direct loans or loan guarantees. Each prospective borrower should list the estimated total capital costs of the project broken down by activity type.

A. Minimum Project Costs

Projects must have eligible costs that are reasonably anticipated to be equal to or exceed \$20 million, or for small communities (serving not more than 25,000 individuals), project costs that are reasonably anticipated to equal or exceed \$5 million.

B. Maximum Amount of WIFIA Credit Assistance

The maximum amount of WIFIA credit assistance to a project is 49% of eligible project costs in almost all instances. EPA may offer small community prospective borrowers credit assistance up to 80% of the eligible project costs.

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C. Appropriation Set-Aside for Small Communities

EPA will endeavor to use 15% of its budget authority for small communities. Recognizing the need that exists in both small and large communities to invest in infrastructure, the WIFIA statute requires that EPA set aside 15% of the budget authority appropriated each year for small communities, defined as systems that serve a population of 25,000 or less. Of the funds set aside, any amount not obligated by June 1 of the fiscal year for which budget authority is set aside may be used for any size community.

VI. Letters of Interest and Applications

Each prospective borrower will be required to submit an LOI and, if invited, an application to EPA to be considered for approval. This section describes the LOI submission and application submission.

A. Letter of Interest (LOI)

Prospective borrowers seeking a WIFIA loan must submit an LOI describing the project fundamentals and addressing the WIFIA selection criteria. Prospective borrowers can find more information on the LOI at <https://www.epa.gov/wifia>.

The primary purpose of the LOI is to provide adequate information to EPA to: (i) determine the eligibility of the prospective borrower and the prospective project, (ii) perform a preliminary creditworthiness assessment, (iii) perform a preliminary engineering feasibility assessment, and (iv) evaluate the project against the selection criteria. Based on its review of the information provided in the LOI, EPA will invite

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prospective borrowers to submit applications for their projects. Prospective borrowers are encouraged to review the WIFIA program handbook at <https://www.epa.gov/wifia/wifia-program-handbook> to help create the best justification possible for the project and a cohesive and comprehensive LOI submittal.

Prospective borrowers must utilize the WIFIA LOI form and follow the guidelines contained on the WIFIA program website: <https://www.epa.gov/wifia>. Prospective borrowers should provide the LOI and any attachments as Microsoft Word documents or searchable PDF files, whenever possible, to facilitate EPA's review. Additionally, prospective borrowers must ensure that financial information, including the pro forma financial statement, is in a formula-based Microsoft Excel document. Prospective borrowers should provide sufficient detail about the project for EPA's review. EPA will notify a prospective borrower if its project is deemed ineligible as described in section III of this document or if additional information is needed to assess the LOI package.

B. Application

After EPA concludes its evaluation of a complete LOI package, a selection committee will invite the prospective borrower to apply based on review and scoring, as applicable, of the selection criteria and satisfaction of the eligibility requirements. The selection committee may choose to combine multiple LOIs or separate projects from a prospective borrower based on the creditworthiness review and may offer an alternative amount of WIFIA assistance than requested in the LOI. Final applications should be

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received by EPA within 365 days of the invitation to apply, but EPA may extend the deadline on a case-by-case basis if the LOI schedule signals additional time may be needed.

An invitation to apply for WIFIA credit assistance does not guarantee EPA's approval, which remains subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to EPA, and the availability of funds at the time at which all necessary recommendations and evaluations have been completed. However, the purpose of EPA's LOI review is to pre-screen prospective borrowers to the extent practicable. It is expected that EPA will only invite prospective borrowers to apply if it anticipates that those prospective borrowers are able to obtain WIFIA credit assistance. Detailed information needs for the application are listed in the application form at <https://www.epa.gov/wifia> and described in the WIFIA program handbook.

VII. Fees

There is no fee to submit an LOI. For information about application and post-closing costs, please refer to the WIFIA program handbook.

VIII. Selection Criteria

This section specifies the criteria and process that EPA will use to evaluate LOIs and award applications for WIFIA assistance.

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EPA will evaluate and select proposed projects described in the LOIs using the selection criteria established in the statute and regulation, and the Administration priorities identified in section I of this document. EPA's priorities reflect water sector challenges that require innovative tools to assist borrowers in managing and adapting to our most pressing public health and environmental challenges. These priorities are reflected in the scoring methodology of the selection criteria below and described in greater detail in the WIFIA program handbook.

The WIFIA selection criteria are divided into three categories: Project Readiness, Borrower Creditworthiness, and Project Impact. Each LOI will be evaluated for the extent to which the project satisfies the criteria listed below for each category. To satisfy the overall category review, it is not necessary to satisfy all criteria for each category. For the Project Impact category, WIFIA staff will score LOIs based on the points indicated below. All projects that satisfy category-level review for all three categories will be selected for funding, assuming sufficient funds are still available. The criteria are as follows:

Project Readiness:

(i) The readiness of the project to proceed toward development, including a demonstration by the obligor that there is a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under WIFIA.

(ii) Preliminary engineering feasibility analysis.

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Borrower Creditworthiness:

- (i) The likelihood that assistance under WIFIA would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.
- (ii) The extent to which the project financing plan includes public or private financing in addition to assistance under WIFIA.
- (iii) The extent to which assistance under WIFIA reduces the contribution of Federal assistance to the project.
- (iv) The amount of budget authority required to fund the Federal credit instrument made available under WIFIA.
- (v) Preliminary determination of prospective borrower and project creditworthiness.

Project Impact:

- (i) **10 points:** The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public benefits, such as (1) the reduction of flood risk; (2) the improvement of water quality and quantity, including aquifer recharge; (3) the protection of drinking water, including source water protection; and (4) the support of international commerce.

- (ii) **15 points:** The extent to which the project (1) protects against extreme weather events, such as floods, hurricanes or drought; or (2) helps maintain or protect the environment, including Priority D.
- (iii) **5 points:** The extent to which the project serves regions with significant energy exploration, development, or production areas.
- (iv) **10 points:** The extent to which a project serves regions with significant water resource challenges, including the need to address: (1) water quality concerns in areas of regional, national, or international significance; (2) water quantity concerns related to groundwater, surface water, or other water sources; (3) significant flood risk; (4) water resource challenges identified in existing regional, state, or multistate agreements; or (5) water resources with exceptional recreational value or ecological importance.
- (v) **5 points:** The extent to which the project addresses identified municipal, state, or regional priorities.
- (vi) **10 points:** The extent to which the project addresses needs for repair, rehabilitation or replacement of a treatment works, community water system, or aging water distribution or wastewater collection system.
- (vii) **15 points:** The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities, including Priority A.

- (viii) **15 points:** The extent to which the project reduces exposure to lead in the nation's drinking water systems or addresses emergent contaminants, including Priorities B and C.
- (ix) **15 points:** The extent to which the project uses new or innovative approaches, including Priority E.

The scoring scales and guidance used to evaluate each project against the selection criteria are available in the WIFIA program handbook. Prospective borrowers considering WIFIA should review the WIFIA program handbook and discuss how the project addresses each of the selection criteria in the LOI submission.

IX. Federal Requirements

All projects receiving WIFIA assistance must comply with the applicable Federal requirements. Compliance with Federal requirements is not required for submitting a letter of interest, being invited to apply for a WIFIA loan, or submitting an application. The WIFIA program will review selected projects for compliance with Federal requirements once they have submitted an application. Additional information about Federal compliance requirements is available in the WIFIA program handbook and at <https://www.epa.gov/wifia/wifia-federal-compliance-requirements>.

X. Opportunities to Learn More About the WIFIA Program

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EPA hosts regular outreach events and monthly office hours to provide further information about submitting an LOI. The outreach schedule and registration instructions can be found on the WIFIA program website: www.epa.gov/wifia.

Prospective borrowers with questions about the program or interest in meeting with the WIFIA program staff may send a request to wifia@epa.gov. EPA will meet with all prospective borrowers interested in discussing the program prior to submission of an LOI.

Authority: 33 U.S.C. 3901-3915; 40 CFR part 35.

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