



# HANDBOOK

September 2023



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## EXECUTIVE SUMMARY

The WIFIA Program Handbook, written for prospective borrowers, describes how the U.S. Environmental Protection Agency (EPA) administers the Water Infrastructure Finance and Innovation Act (WIFIA) program (the WIFIA program).<sup>1</sup> This handbook provides prospective borrowers with the information and resources needed to understand the requirements and procedures for obtaining WIFIA credit assistance and remaining in compliance with WIFIA program rules and regulations.

This handbook consists of eleven sections and nine appendices as follows:

**Section 1 – Introduction to WIFIA** provides background information on the WIFIA program, introduces the WIFIA program’s objectives, and describes the administration and organization of the WIFIA program. This section helps the reader understand the mission of the WIFIA program, the legislative actions that created and fund the WIFIA program, and the different parties within the government that are involved in administering the WIFIA program.

**Section 2 – Eligibility Requirements** lists the statutory eligibility requirements that projects and entities applying for WIFIA credit assistance must meet, as well as the compliance requirements for borrowers receiving WIFIA credit assistance. This section helps the reader determine whether it is eligible to apply for WIFIA credit assistance and what successful borrowers must do to remain in compliance.

**Section 3 – Statutory Terms and Conditions** presents the terms of WIFIA credit assistance required by statute, as well as key credit policies governing the WIFIA program.

**Section 4 – Base Program Credit Policies** describe policies that influence the structuring of projects’ financing plans for the base program and guide the WIFIA program’s creditworthiness determination.

**Section 5 – Loan Process Summary** provides an overview of the process by which WIFIA credit assistance is awarded. It provides a high-level understanding of the major steps and milestones involved in obtaining WIFIA credit assistance and the order in which those steps occur.

**Section 6 – Base Program Project Selection** describes the base program selection phase of the application process, including the LOI submission and evaluation. This section helps prospective borrowers understand how to submit a complete LOI for WIFIA credit assistance and the process used by the WIFIA program to select projects to invite to submit applications.

**Section 7 – Base Program Project Approval** describes the final phase of the base program process through loan closing. This section helps prospective borrowers understand how to submit a complete application for WIFIA credit assistance and what process and criteria the WIFIA program will use to evaluate and approve projects to receive WIFIA credit assistance. This section also describes the closing process, which occurs after projects have been approved for WIFIA credit assistance, the WIFIA program’s requirements for proceeding to closing, and the structure and purpose of the loan agreement.

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<sup>1</sup> Electronic copies of this program handbook, application materials, and additional information regarding the WIFIA Program are located on the [WIFIA website](#).

**Section 8 – Post-Closing Activities and Project Monitoring** explains the activities and requirements that follow loan closing, including the process by which disbursements and loan servicing occur, as well as the general requirements that borrowers must fulfill to maintain good standing within the WIFIA program.

**Section 9 – SWIFIA Credit Policies** describe policies that influence the structuring of project financing plans for the SWIFIA program and guide the WIFIA program’s creditworthiness determination.

**Section 10 – SWIFIA Project Selection** describes the SWIFIA selection phase of the application process, including the LOI submission and evaluation. This section helps prospective borrowers understand how to submit a complete LOI for WIFIA credit assistance and the process used by the WIFIA program to select SRFs to invite to submit applications.

**Section 11 – SWIFIA Project Approval** describes the final phase of the SWIFIA process through loan closing. This section helps prospective borrowers understand how to submit a complete application for WIFIA credit assistance and what process and criteria the WIFIA program will use to evaluate and approve projects to receive WIFIA credit assistance. This section also describes the closing process, which occurs after projects have been approved for WIFIA credit assistance, the WIFIA program’s requirements for proceeding to closing, and the structure and purpose of the loan agreement.

**Appendix A – Acronyms** spells out the acronyms used in the handbook.

**Appendix B – Definitions** defines key terms used throughout the handbook.

**Appendix C – Base Water Selection Criteria** describes the selection criteria and the way the WIFIA program will evaluate each criterion.

**Appendix D – Fee Schedule** outlines EPA’s final fee schedule.

**Appendix E – Compliance Requirements** lists laws and regulations with which borrowers receiving WIFIA credit assistance must comply.

**Appendix F – Confidential Business Information** provides information about the ability to make a business confidentiality claim.

**Appendix G – Base Program Letter of Interest Tips** provides tips on correctly filling out each section of a LOI.

**Appendix H – NEPA Applicability Overview** presents an overview of how EPA will assess the level of National Environmental Policy Act (NEPA) review for a project.

**Appendix I – Re-execution of WIFIA Loan Agreement** provides information on the process and requirements for re-execution of WIFIA loan agreements.

**Application Materials**, including LOI and application forms for the WIFIA program, are available on the [WIFIA website](#).

**WIFIA Legislation and Regulations**, including the statute, the implementation rule, and the fee rule, are available on the [WIFIA website](#).

## CONTACT INFORMATION

EPA welcomes questions and inquiries concerning the WIFIA program. The WIFIA program can be contacted at:

WIFIA program

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

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

Courier address:

Director, WIFIA Program

US EPA William Jefferson Clinton East Building-room 7334A

1201 Constitution Ave, NW Washington, DC 20004

Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1-800-877-8339.

To receive announcements from the WIFIA program, sign up at <https://tinyurl.com/wifianews>.



# SECTION 1: INTRODUCTION TO WIFIA

## SECTION 1: INTRODUCTION TO WIFIA

The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) established a federal credit program (referenced hereafter as the WIFIA program) administered by the U.S. Environmental Protection Agency (EPA). The WIFIA program accelerates investment in water and wastewater infrastructure of national and regional significance by offering loans<sup>2</sup> to creditworthy borrowers for up to 49 percent of eligible project costs.

WIFIA authorizes EPA to provide direct loans and loan guarantees to eligible borrowers for water infrastructure projects.<sup>2</sup> Prospective borrowers will submit a letter of interest (LOI) that demonstrates their projects' eligibility, financial creditworthiness, engineering feasibility, and alignment with WIFIA selection criteria. Using the information provided in the letter of interest LOI, EPA will evaluate and select projects. For the selected projects, prospective borrowers will be invited to apply to EPA. In the application, selected prospective borrowers provide EPA with materials necessary to underwrite the proposed WIFIA assistance and to develop an individual loan agreement between the applicant and EPA. EPA will only invite projects to apply if it anticipates that those projects can obtain WIFIA credit assistance. Following loan closing, borrowers will be in close coordination with their portfolio manager to ensure ongoing compliance with the loan agreement, receive disbursements, and process repayments.



EPA's WIFIA program is authorized to provide loans through 2 programs:

- **WIFIA Base Program:** The base program is available to a diverse set of borrowers to finance water infrastructure projects.
- **State Infrastructure Financing Authority WIFIA (SWIFIA) Program:** In section 4201 of America's Water Infrastructure Act (AWIA) of 2018, Congress authorized EPA to establish a loan program exclusively for State infrastructure financing authority borrowers to finance a combination of State Revolving Fund (SRF)-eligible wastewater or drinking water projects submitted in a single application.

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<sup>2</sup> WIFIA authorizes EPA to provide loans or loan guarantees. The term "loans" will be used throughout this handbook in place of "loans or loan guarantees."

WIFIA loans have distinct benefits that are not readily available in the capital markets. The WIFIA program can act as a patient investor and offer credit assistance with extended maturities due to the federal government's long-term investment horizon. In the WIFIA Base Program, it can offer borrowers the advantage of developing customized terms, including sculpted repayment schedules to match the specific needs of a project. Finally, the WIFIA program lends at a low, fixed interest rate equal to the Treasury rate for a comparable maturity.

EPA recognizes the importance of capital markets in developing and improving water and wastewater infrastructure throughout the nation. The WIFIA program is intended to complement existing funding resources rather than supplant them. All projects that receive WIFIA credit assistance must be co-financed with other sources of funding, such as tax-exempt or taxable bonds, loans, grants, and equity.

EPA balances the distinct credit advantages that the WIFIA program offers with prudent lending practices. The WIFIA program will only fund projects that it finds to be creditworthy during the evaluation process.

## 1.1 LEGISLATIVE REFERENCE

Congress enacted the WIFIA program as part of the Water Resources Reform and Development Act of 2014<sup>3</sup> (WRRDA) and its subsequent amendments. Chapter 52 of Title 33 of the United States Code codifies WIFIA, with supporting regulations appearing in 40 C.F.R. 35 subpart Q<sup>4</sup>. These documents are provided on the [WIFIA program website](#).

## 1.2 FUNDING OF WIFIA CREDIT ASSISTANCE

The WIFIA program is governed by The Federal Credit Reform Act of 1990.<sup>5</sup> Therefore, EPA is required to estimate the credit subsidy (i.e., the long-term cost to the Federal government) of each WIFIA loan, account for this cost with an appropriation by Congress, and set it aside in a reserve. EPA must estimate and set aside this reserve before it can close or disburse WIFIA credit assistance. Congress appropriates funding to cover the credit subsidy cost of WIFIA credit assistance. Congress may also set a loan limit on the total amount of WIFIA credit assistance that can be extended under each appropriation.

## 1.3 PROGRAM ADMINISTRATION

The WIFIA program provides credit assistance to eligible borrowers. It is housed in the WIFIA Management Division in the Office of Wastewater Management within the Office of Water and led by a Director.

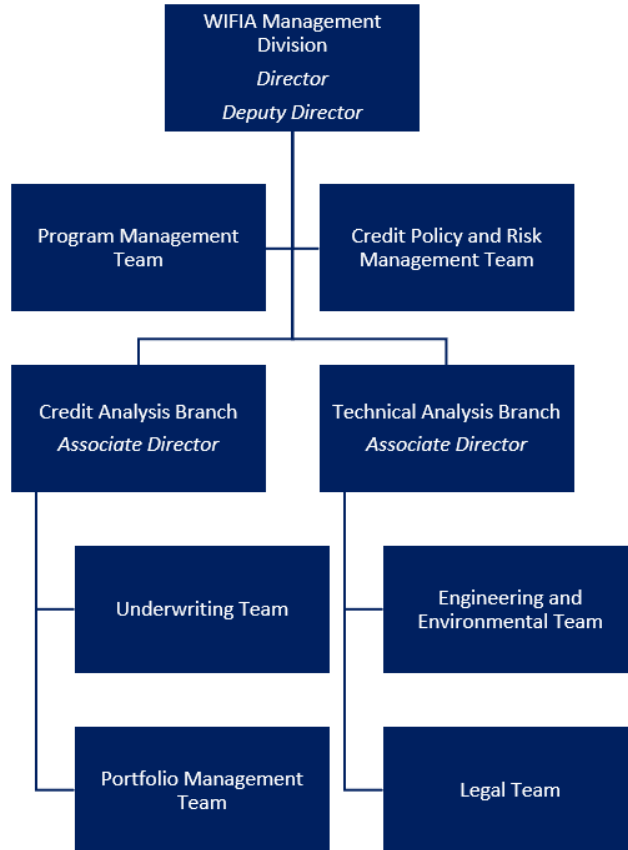
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<sup>3</sup> [P.L. 113-121, § 5022-5035](#)

<sup>4</sup> [40 C.F.R. 35 subpart Q](#)

<sup>5</sup> <https://fiscal.treasury.gov/files/ussgl/fcra.pdf>

FIGURE 1-1: WIFIA MANAGEMENT DIVISION ORGANIZATIONAL STRUCTURE



As displayed in Figure 1-1, the WIFIA Management Division is led by the Director and Deputy Director and comprised of two branches and six teams:

**Director** manages the WIFIA program, develops program policy, and leads interaction with EPA leadership.

**Deputy Director** supports the management of the WIFIA program with a focus on administrative functions such as budgets, contracts, human resources, and communication.

**Program Management Team** provides comprehensive program support. Functions include communication, project selection, organizational operations, and program evaluation.

**Credit Policy and Risk Management Team** takes a portfolio view of credit risks and programmatic policies. Its tasks include determining transactional credit risk and how that is quantified in the credit subsidy model, tracking programmatic repayment risk, controlling credit subsidy estimation, and maintaining and recording office credit and policy decisions.

#### **Credit Analysis Branch**

**Underwriting Team** focuses on individual transactions from the receipt of the LOI to loan closing. Its functions include determining preliminary creditworthiness, leading individual transactions through the WIFIA application process, leading the WIFIA team through individual transaction evaluations, and negotiating loan terms and agreements.

**Portfolio Management Team** manages assets and monitors the project construction and financial compliance of borrowers. Its responsibilities include disbursement processing, loan monitoring, loan amendments, and loan workouts.

#### **Technical Analysis Branch**

**Engineering and Environmental Team** assesses the project's technical assumptions, as well as its construction and operating feasibility. This team is also responsible for determining eligible project costs and ensuring borrower compliance with Federal requirements, such as National Environmental Policy Act (NEPA) and other Federal requirements.

**Legal Team** supports the WIFIA program in structuring, reviewing, guiding, and documenting credit transactions. The team also provides opinions and recommendations to the WIFIA program on legal issues affecting WIFIA transactions, including compliance with WIFIA statute and rules as well as other applicable Federal laws.

# SECTION 2: ELIGIBILITY REQUIREMENTS

## SECTION 2: ELIGIBILITY REQUIREMENTS

This section outlines the requirements that entities applying for and receiving WIFIA loans must satisfy, as defined by the WIFIA statute, regulations, and EPA policy. Should a LOI or application demonstrate that the prospective borrower or project is not eligible, the WIFIA program will not continue its evaluation and will not consider the project for WIFIA credit assistance. If you have eligibility questions, contact the WIFIA program prior to submitting a LOI.

### 2.1 ELIGIBLE BORROWERS

The entity applying for WIFIA credit assistance must be one of the following:<sup>6</sup>

- A corporation.
- A partnership.
- A joint venture.
- A trust.
- A state or local government entity, agency, or instrumentality.
- A tribal government or consortium of tribal governments.
- A State infrastructure financing authority as defined by the Clean Water Act and the Safe Drinking Water Act.<sup>7</sup>

The entity applying for SWIFIA credit assistance must be a State infrastructure financing authority.

### 2.2 ELIGIBLE PROJECTS

Prospective borrowers may only apply for WIFIA credit assistance with the purpose of undertaking one or several of the following eligible projects.<sup>8</sup>

1. Wastewater projects that are eligible for the Clean Water SRF as described under section 603 of the Federal Water Pollution Control Act,<sup>9</sup> notwithstanding the public ownership requirement under paragraph (1) of that subsection. The [Clean Water SRF](#) website provides additional eligibility information for this project type.
2. Drinking water projects that are eligible for the Drinking Water SRF as described in section

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<sup>6</sup> [33 U.S.C. § 3904\(1-7\)](#)

<sup>7</sup> [33 U.S.C. § 1383](#) and [42 U.S.C. §§ 300j-12\(a\)\(2\)](#)

<sup>8</sup> [33 U.S.C. § 3905\(2-10\)](#)

<sup>9</sup> [33 U.S.C. § 1383](#)

1452(a)(2) of the Safe Drinking Water Act.<sup>10</sup> The [Drinking Water SRF](#) website provides additional eligibility information for this project type.

3. Projects that enhance energy efficiency in the operation of a public water system or a publicly owned treatment works.
4. Projects 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).
5. A brackish or sea water desalination project, including chloride control, a managed aquifer recharge project, a water recycling project, or a project to provide alternative water supplies to reduce aquifer depletion.
6. A project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds.
7. The acquisition of real property or an interest in real property. The acquisition must either be integral to an eligible project described in paragraphs 1-5 above or would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for WIFIA assistance, as determined by the Administrator.
8. A combination of eligible wastewater or drinking water projects, as defined in the first and second bullet above, for which a State infrastructure financing authority submits a single application.
9. A combination of eligible projects, described in paragraphs 1-7 above, secured by a common security pledge, for which a single eligible entity, or a combination of eligible entities, submits a single application.

For clarity, eligible projects, including combinations of projects, will be referred to as a single project in this document.

## DEFINITION OF PROJECT

An individual project consists of all the construction necessary to complete the building or work regardless of the number of contracts or sources of funding involved so long as all contracts and sources of funding are closely related in purpose, time, and place. This precludes the intentional splitting of projects into separate contracts with separate sources of funding to avoid federal requirement compliance on some portion of a larger project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place. In this case, WIFIA credit assistance for one or more phases would carry separate requirements from non-WIFIA funded phases.

In general, a project should involve new construction or work. This does not mean that a project can only involve brand new infrastructure that did not previously exist. Rather, new construction or work

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<sup>10</sup> [42 U.S.C. §§ 300j-12\(a\)\(2\)](#)

can relate to existing infrastructure. For example, repair, rehabilitation or replacement of an existing plant or pipe would involve new construction and would be considered an eligible project. In addition, projects such as water conservation and surface water protection and restoration are eligible for WIFIA funding. Such projects may include land purchases and programmatic expenses and may not include construction.

## MULTIPLE PROJECTS UNDER A SINGLE LOAN

The WIFIA program can also fund multiple discrete construction projects through a single loan if they are secured by a common security pledge, serve a common purpose, and submitted in a single LOI and application. By statute, the WIFIA program cannot fund a single loan consisting of multiple projects secured by various independent streams of revenue. For example, a single loan to finance (1) a wastewater project supported by the streams of wastewater revenue and (2) a land acquisition project supported by property tax revenue of the city, would not be allowed. The WIFIA program will consider a loan with multiple projects pledged by various sources of revenue if these streams are cross-collateralized.

Borrowers that need to complete many projects that are similar in type and construction scope, such as a pipe rehabilitation or manhole replacement program, can request financing for implementing the program over a set time up to 5 years. These projects may have a broad geographic area where work will take place, and the specific project locations do not need to all be defined before the closing of the loan. All projects should reach substantial completion no later than five years post loan closing or five years after the start of project construction.

Borrowers that need to construct several projects to achieve a specific purpose, such as controlling combined sewer overflows, managing stormwater, or recycling water, can request financing for projects which are each different in scope, for example, treatment plant improvements and pipe rehabilitation. The projects may have similar construction starting and finishing timeframes or be sequential phases of a larger program. Each project in the loan should have defined locations and defined scopes of work at loan closing. In general, the WIFIA program prefers that all projects achieve substantial completion within 5 years of loan closing or the start of project construction.

By including multiple projects in a single loan, borrowers gain:

- Financing certainty for all the included projects expected to be constructed in a 5-year period. Borrowers can request disbursements for any project included in the loan immediately following closing until one year after substantial completion of the final project.
- The ability to use WIFIA loans to finance smaller projects that would not individually meet the WIFIA program's minimum project cost requirement, \$5 million for small communities and \$20 million all other communities.

For examples of multiple projects financed by a single WIFIA loan, visit

[https://www.epa.gov/system/files/documents/2021-07/multipleprojectsoneloan\\_final.pdf](https://www.epa.gov/system/files/documents/2021-07/multipleprojectsoneloan_final.pdf).

## MULTIPLE PROJECTS UNDER A MASTER AGREEMENT

Borrowers seeking WIFIA financing for a combination of projects under a single WIFIA LOI may benefit from a Master Agreement. A Master Agreement is an umbrella contract between EPA and a borrower, providing an up-front commitment of loan proceeds (i.e., a reservation of loan funding) and a common

set of legal and financial terms under which a borrower can close multiple WIFIA loans over time. Borrowers execute loans under the Master Agreement as projects are ready to proceed and environmental documentation is complete. A Master Agreement may be beneficial when the phasing, cost, scope, schedule, and location of some projects may change as the project develops, or when the borrower wishes to finance multiple projects over time that do not share a common purpose. Borrowers may request a master agreement in their LOI or application, or EPA may offer it.

The benefits of the master agreement include:

- **Facilitating bundling of staggered projects.** Prospective borrowers can submit a single LOI and application to the WIFIA program and receive multiple loans under the Master Agreement for projects with staggered project development time frames. Using a single LOI and application form will reduce the effort and resources expended by a borrower in seeking WIFIA assistance.
- **Ensuring access to timely low-cost capital.** Once a Master Agreement is in place, the WIFIA program will expedite the closing of individual loans under the Master Agreement after the borrower provides notice that funds are needed for a project(s) and EPA completes the applicable federal environmental decision. Individual loans will have a common set of legal and financial terms as outlined in the Master Agreement. EPA and the borrower execute individual loans under the Master Agreement using a standard short-form loan agreement. Additional due diligence and documentation at each loan closing is limited. As a result, the WIFIA program can underwrite and document each WIFIA loan under a Master Agreement quickly and at a lower cost than loans closed outside of a Master Agreement.

A case study illustrating the benefits of utilizing a master agreement is available at:

[https://www.epa.gov/sites/default/files/2021-05/documents/master\\_agreement\\_overview.pdf](https://www.epa.gov/sites/default/files/2021-05/documents/master_agreement_overview.pdf)

## COMBINATION OF PROJECTS SUBMITTED BY STATE INFRASTRUCTURE FINANCE AUTHORITIES

These considerations do not apply to a combination of projects submitted to EPA by a State infrastructure financing authority under a single application for either the WIFIA base program or the SWIFIA program. State infrastructure financing authorities are allowed by statute to submit an application for a combination of SRF-eligible projects. In effect, they are capitalizing their SRF programs through the addition of WIFIA loan proceeds to their base program. By their nature, SRF programs lend to a variety of different projects with different security pledges, purposes, and construction time frames. Therefore, State infrastructure financing authorities do not have to adhere to the same requirements as other borrowers for purposes of this section.

## DEFINITION OF SWIFIA PROJECT

The SWIFIA project is a combination of Clean Water and Drinking Water SRF-eligible, as defined in the first and second bullet above, for which a State infrastructure financing authority submits a single application. The SWIFIA project includes all the SRF loans being included in the request for credit assistance. This includes both the SRF loans that will be financed with the SWIFIA loan (up to 49% of SWIFIA Project costs) and the SRF loans that will be financed by other sources.



## 2.3 COST THRESHOLD

For a project to be eligible for WIFIA credit assistance, the project's eligible costs, as defined in Section 2.6, must be reasonably anticipated to be at least \$20 million.<sup>11</sup> This threshold is lower for projects serving small communities. Small community projects must be reasonably anticipated to total at least \$5 million. The statute defines projects in small community projects as projects eligible for the Clean Water and Drinking Water SRFs, as defined in numbers 1 and 2 of the eligible project list in Section 2.2, that serve a community of not more than 25,000 individuals.<sup>12</sup>

## 2.4 PUBLIC SPONSORSHIP

Eligible projects carried out by private entities must be publicly sponsored. To satisfy this requirement, the prospective borrower must demonstrate that it has consulted with and gained the support of the affected state, local, or tribal government in which the project is located.<sup>13</sup> The prospective borrower can show support by including a certified letter signed by the supporting State, tribal, or municipal department or similar agency; governor, mayor or other similar designated authority; statute or local ordinance, or any other means by which government approval can be evidenced.

## 2.5 CREDITWORTHINESS

Projects applying for WIFIA credit assistance must demonstrate a reasonable assurance of repayment of the credit instrument over the term of the requested assistance. In determining a project's creditworthiness, the Administrator considers the following:

- The terms and conditions of the proposed financing.
- The financial structure and security features of the proposed financing.
- The dedicated revenue sources that will secure or fund the project obligation.
- The financial assumptions upon which the project is based.
- The financial soundness, credit history, and outlook of the prospective borrower.<sup>14</sup>

## 2.6 ELIGIBLE COSTS

Not all costs associated with eligible projects are eligible project costs. To determine whether a project meets the eligibility threshold for minimum project size, the WIFIA program must verify the eligibility of the project costs and calculate the total amount of eligible project costs included in the project. The WIFIA program must also ensure that the amount of WIFIA credit assistance as a percentage of total eligible project costs does not exceed the maximum percentage allowed under the statute, budget authority, and funding legislation. Eligible project costs are costs associated with the following activities, as defined in the statute:<sup>15</sup>

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<sup>11</sup> [33 U.S.C. § 3907\(a\)\(2\)\(A\)](#)

<sup>12</sup> [33 U.S.C. § 3907\(a\)\(2\)\(B\)](#)

<sup>13</sup> [33 U.S.C. § 3907\(a\)\(4\)\(B\)](#)

<sup>14</sup> [33 U.S.C. § 3907\(a\)\(1\)\(B\)](#)

<sup>15</sup> [33 U.S.C. § 3906](#)

- 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.
- Construction, reconstruction, rehabilitation, and replacement activities.
- 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 that would mitigate the environmental impacts of water resource infrastructure projects otherwise eligible for WIFIA credit assistance), construction contingencies, and acquisition of equipment.
- Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.
- Interest during construction: Eligible costs include interest during construction on capital market bonds and notes, SRF loans, and other similar debt to be approved on a case-by-case basis.
- Debt Service Reserve Funds: Eligible costs include the initial funding of a debt service reserve fund for a WIFIA loan, capital market bonds, SRF loans, and other similar WIFIA Project debt as approved on a case-by-case basis. Debt service reserve funds must be sized to capital market standards. The initial balance may be funded after financial close and through multiple disbursements of the WIFIA loan.
- Capital issuance expenses: Eligible costs include capital issuance expenses. These generally include costs of financial, legal, and other professional services; costs of issuing WIFIA Project debt, such as fees, transaction costs and other customary charges imposed by lenders; and the cost of obtaining a credit rating letter for the WIFIA loan and other WIFIA Project debt.
  - Major Maintenance or Capital Expenditure Reserve Funds: The WIFIA program will consider the eligibility of spare major essential items that are included in the construction contract on a case-by-case basis. For project financings, eligible costs generally include the initial cash funding of Major Maintenance or Cap Ex Reserve Funds.
  - The following are not eligible project costs: debt principal payments; capitalized interest on WIFIA credit assistance; Construction Contingency Reserve Fund for cost overruns during construction; retainage from payments to designers or constructors; and Operating and Maintenance Reserve Funds are not eligible project costs.

Additionally, indirect costs allocable to the development, oversight, or management of a project are generally eligible.

Prospective borrowers may request that costs incurred prior to receipt of credit assistance, including the value of any integral in-kind contributions, be included as a part of eligible project costs<sup>16</sup>. The WIFIA program will approve such requests on a case-by-case basis. The WIFIA program may count a borrower's

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<sup>16</sup> The [Previously Incurred Costs in the WIFIA Program](#) rule amends the WIFIA regulations to clarify the process and conditions for including costs incurred and the value of integral in-kind contributions made before loan closing in the calculation of total eligible costs. It also explains the process for being reimbursed for those eligible costs by WIFIA loan proceeds.

previously incurred costs toward the WIFIA project total budget provided that those project costs are an integral part of the overall WIFIA project effort. There is no strict time limitation for looking back to determine eligible project costs. However, the project costs must be directly a part of the overall WIFIA effort and compliant with other WIFIA program eligibility rules and other Federal requirements.

In addition, the WIFIA program may reimburse borrowers for properly documented costs incurred prior to financial close. WIFIA will not refinance completed projects. Projects are required to be pre-construction or underconstruction at the time of loan closing. The WIFIA program retains the right to ask for appropriate documentation to evidence such costs for both sizing the WIFIA loan and reimbursement.

## 2.7 FEDERAL COMPLIANCE REQUIREMENTS

Projects receiving WIFIA credit assistance must comply with all relevant federal laws and regulations. The following subsections describe four requirements that are of particular importance to the WIFIA program. Appendix E lists additional compliance requirements but is not intended as a comprehensive inventory. Appendix H provides prospective borrowers an overview of how EPA will assess the appropriate level of National Environmental Policy Act (NEPA) review for an individual project. This is provided for informational purposes. Additional information on WIFIA federal compliance requirements is available on the WIFIA program website: <https://www.epa.gov/wifia/wifia-federal-compliance-requirements>.

### BUILD AMERICA, BUY AMERICA ACT (BABA) REQUIREMENT

The BABA statute requires borrowers receiving WIFIA credit assistance to use iron, steel, manufactured products, and construction materials produced in the United States.<sup>17</sup> All iron and steel, manufactured products and construction materials permanently incorporated into a project and financed by WIFIA credit assistance, even if purchased with non-WIFIA funds, must comply with this requirement.

The Office of Management and Budget's (OMB) [Made in America Office](#) guides BABA implementation across all federal agencies. The Office issued [initial implementation guidance](#) in April 2022 and is currently finalizing BABA implementing regulations that will be housed in the code of federal regulations, Title 2 Subtitle A of the OMB Guidance for Grants and Agreements. Implementation Q&As that directly apply to Office of Water funding programs, including WIFIA, can be found on the [EPA BABA website](#).

For WIFIA-funded projects that have initiated project design planning prior to May 14, 2022, EPA issued a [program waiver of the requirements](#) of section 70914(a) of the BABA that may apply. For purposes of this waiver, "initiated project design planning" means efforts made by the utility owner to evaluate and identify both technologically and financially viable options for capital improvement projects. These efforts can be in various forms of technical documents describing design concepts, alternatives analyses, and long-term facility or system plans. Examples include preliminary engineering reports, comprehensive master plans, basis of design reports, and technical design memorandum that describe these efforts for the project. As proposed, the WIFIA program determines if a project meets the criteria for the waiver after an application is submitted. A separate waiver application would not be required.

This program waiver does not waive WIFIA's American Iron and Steel (AIS) requirements, which is a

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<sup>17</sup> Pub. L. No. 117-58, §§ 70901-52.

statutory requirement under 33 U.S.C. §3914 (American Iron and Steel (AIS) requirement). Projects that are covered by the program waiver that waives BABA requirements will still need to comply with the AIS requirement.

### AMERICAN IRON AND STEEL (AIS) REQUIREMENT

The statute requires borrowers receiving WIFIA credit assistance to use iron and steel products produced in the United States.<sup>19</sup> Borrowers may not use WIFIA credit assistance for the construction, alteration, maintenance, or repair of a project eligible for assistance unless all the iron and steel products used in the project are produced in the United States, even if purchased with non-WIFIA funds. By statute, “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.<sup>18</sup> Equipment employed in construction that does not become part of the project is not considered an “iron and steel product” for the purposes of this requirement.

Guidance developed for compliance with AIS requirements for EPA’s SRF programs applies to projects receiving WIFIA credit assistance and can be found on the [EPA Clean Water State Revolving Fund’s website](#).

EPA may grant waivers for a case or category of cases upon request from the borrower. EPA will grant a waiver if it finds that (i) applying these requirements would be inconsistent with the public interest; (ii) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (iii) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent. Prospective borrowers should contact the WIFIA program with any questions regarding AIS requirements and waivers.

The following national waivers issued by EPA apply to projects receiving WIFIA credit assistance in the same manner as they apply to projects receiving assistance under the Clean Water and Drinking Water SRF programs:

- National Product Waiver for Pig Iron and Direct Reduced Iron
- De Minimis Waiver

Each of these national waivers can be found on the [EPA Clean Water State Revolving Fund’s website](#).

### DAVIS-BACON WAGE REQUIREMENT

The statute requires WIFIA borrowers pay all laborers and mechanics employed by contractors or subcontractors wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor.<sup>19</sup> This is commonly referred to as the Davis-Bacon wage requirement. This requirement applies to all laborers and mechanics working on a project, not only those paid from WIFIA credit assistance. Further guidance can be found on the [Department of Labor’s website](#).

### NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Projects receiving WIFIA or SWIFIA credit assistance are required to comply with the National

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<sup>18</sup> [33 U.S.C. § 3914\(b\)](#)

<sup>19</sup> [33 U.S.C. § 3909\(e\)](#)

Environmental Policy Act (NEPA) of 1969, 42 U.S.C. § 4321 *et seq.*, which 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. WIFIA's NEPA action is the issuance of a WIFIA loan. The Council of Environmental Quality has established NEPA implementing regulations at 40 C.F.R. part 1500 for meeting these requirements, and each Federal agency has developed its own implementing procedures specific to its mission. NEPA requirements do not apply at the LOI stage, and therefore compliance with NEPA is not a prerequisite for submitting a LOI, being invited to apply for a WIFIA loan, or submitting an application.

During the project review stage after the submittal of the WIFIA loan application, each proposed project must be assessed for its impact on the environment under the guidelines set forth by the NEPA.<sup>20</sup> EPA will not close a loan and obligate funds for a project prior to completing its NEPA review.

The applicant must provide information to the WIFIA program about the project and its potential environmental effects. The program and the applicant will discuss the scope of information to be provided to the program in its application. This information may include the project description and potential environmental impacts of the proposed project, project purpose and need, project details and design, and costs. EPA is responsible for the NEPA review. In carrying out its responsibilities, EPA will take the following actions:

- Review the information submitted by the applicant.
- Determine the adequacy of the information submitted for making a decision on the appropriate level of environmental review under NEPA.
- Prepare the appropriate environmental review document or review and adopt environmental review documents prepared by the applicant, other federal agency, or a third-party contractor and ensure its accuracy.
- If necessary, issue an EA or draft/final EIS and take public comment.
- If necessary, complete the NEPA process through preparation of the appropriate decision-making document such as a final finding of no significant impact (FONSI) or ROD.

**Categorical Exclusion (CATEX):** The applicant can review EPA's list of actions that may be categorically excluded at [40 C.F.R. § 6.204](#) to determine if the project fits within an established CATEX. An applicant who concludes that the project may qualify for a CATEX may request a CATEX determination from EPA; or EPA may determine that a proposed project may be eligible for a CATEX during initial discussions with the applicant about the proposed project. If EPA determines the project does not qualify for a CATEX, the applicant will provide EPA with more detailed information on the proposed project in the form of an Environmental Information Document (EID).

**WIFIA Programmatic Environmental Assessment:** WIFIA and SWIFIA projects may also be eligible for coverage under the [WIFIA Programmatic Environmental Assessment \(PEA\)](#). The PEA analyzes the potential environmental impacts related to the issuance of credit assistance under WIFIA. The PEA is an innovative approach to environmental review covering a group of projects that are similar in scope, scale, and magnitude, and that have similar types of impacts, rather than a singular project. Projects

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<sup>20</sup>[42 U.S.C. § 4321](#)

covered under the PEA do not require an additional public notification or public comment period. The PEA provides a streamlined NEPA compliance path for water and wastewater infrastructure projects and will make compliance with NEPA straightforward using an environmental questionnaire. WIFIA credit assistance projects qualify for coverage under this PEA when:

- The impacts from 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.](#)

**Environmental Information Document:** If EPA determines that the project does not qualify for a CATEX or the PEA, EPA will likely ask the applicant to submit an Environmental Information Document (EID) to EPA to provide information about the project and its potential environmental effects, if a previously completed EID was not already provided to EPA. The EID provides basic project information including a detailed description of the proposed project and evaluates the environmental impacts and alternatives to the proposed project. The scope and level of detail of the EID should be commensurate with the magnitude and significance of the proposed project.

The applicant should consult with EPA to obtain information on the processes to follow when preparing an EID and the information that should be included. If the applicant holds one or more public meetings as part of preparing the EID, a description of the process and any additional documentation should be included in the EID. Please be aware that EPA may request additional information from the applicant if insufficient information has been provided for EPA to conduct the NEPA review.

**Environmental Assessment (EA):** If EPA determines that the proposed project does not qualify for a CATEX or the PEA, EPA may evaluate the proposed project in an EA. The prospective borrower's role in the EA process is to provide sufficient information in the EID submitted to EPA. In some cases, the prospective borrower may submit a draft EA and supporting documents in lieu of an EID. EPA may contact the prospective borrower during the EA preparation process to request additional information on the project or its potential impacts. If the EA results in a FONSI, the prospective borrower may also be asked to assist EPA in conducting any public review process. The prospective borrower should consult with EPA for the exact processes to follow.

**Environmental Impact Statement (EIS):** If EPA determines that the proposed project does not qualify for a CATEX, the PEA or EA, or an EA has concluded that significant impacts will occur, EPA may evaluate the proposed project in an EIS. EPA may enter into a third-party agreement with the applicant to hire a consulting firm to prepare the EIS. As the project's proponent, the applicant may be asked to assist EPA (e.g., by providing project information, assisting with public meetings or hearings, and helping to respond to comments that require project changes). After the EIS is complete, EPA will decide on the action it will take and formalize it in a Record of Decision (ROD).

EPA has compiled additional information included in Appendix H to provide an overview of how EPA will evaluate the appropriate level of NEPA review.

## ENDANGERED SPECIES ACT (ESA)

The Endangered Species Act (ESA) was passed in 1973 with the goal of protecting at-risk ecosystems and wildlife under increasing development and economic growth. The act led to the creation of the US Fish and Wildlife Service's Threatened and Endangered Species list, which records all federally endangered or threatened species and the status of their critical habitat. Under Section 7 of the ESA, all federal agencies are charged with aiding in the conservation of listed species. Additionally, all federal agencies are required to ensure that their activities are not likely to jeopardize, destroy, or adversely modify any listed species or their critical habitat.

The WIFIA program evaluates all projects applying for WIFIA funding for their potential impact on endangered, threatened, or proposed endangered, and critical habitat based on project location and construction/design plans. Actions that may affect listed species or their critical habitat must be reviewed through a consultation process between EPA and either the U.S. Fish and Wildlife Service, which is responsible for terrestrial and freshwater species, or the National Marine Fisheries Service, which is responsible for most marine species. The consultation requirements are stated in the Act as follows:

*Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02.*

The timing of the consultation process can vary greatly depending on the circumstances. Because the Act requires the WIFIA team to consult with outside agencies, EPA cannot control the timing and is subject to the availability of the consulting offices. In some cases, this process can be completed in as little as a few weeks. Other instances require more time, possibly taking multiple months. In general, all consultations must be complete before a loan may close. Regardless of the findings of the consultation, Section 9 of the Act prohibits any "persons" in the U.S., including federal agencies, states, and other non-federal entities from "taking" (e.g., harming, harassing, or killing) individuals of listed animal species. After a loan closes, the WIFIA program and the borrower must continue to work together to ensure the project does not jeopardize any listed species or critical habitat.

## **NATIONAL HISTORIC PRESERVATION ACT (NHPA)**

The National Historic Preservation Act (NHPA) embodies a long-standing national policy to preserve historic sites, buildings, structures, districts, and objects of national, state, tribal, local, and regional significance and, among other things, to protect such historic properties from adverse impacts caused by activities undertaken or funded by federal agencies. NHPA expanded the scope of the 1935 Historic Sites Act (Pub. L. No. 74-292) by establishing the National Register of Historic Places, a listing of historical and cultural resources maintained by the U.S. Department of the Interior (DOI).

The fundamental responsibilities of federal agencies are expressed in Section 106 of the Act, which reads:

*The head of any Federal agency having direct or indirect jurisdiction over a proposed or federally assisted undertaking in any State and the head of any Federal department or independent*



*agency having authority to license any undertaking shall, prior to approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act (16 U.S.C. § 470i et. seq.) a reasonable opportunity to comment with regard to such undertaking (16 U.S.C. §470(f)).<sup>21</sup>*

The NHPA is administered by the DOI and the Advisory Council on Historic Preservation (the Council). The Council implements Section 106 of the NHPA and has promulgated regulations for consultation regarding how to determine the effects of federal agency undertakings on historic properties (36 C.F.R. Part 800). Although under certain circumstances the Council may become directly involved in such consultations, the procedures generally call for consultation between the federal agency and relevant state or tribal historic preservation officers (SHPOs and THPOs) and other interested parties, including applicants for federal assistance (who may be authorized to initiate consultation with the SHPO/THPO and others – 36 C.F.R. § 800.2(c)(4)). The consultation process generally involves a series of determinations regarding the area of potential effect of the undertaking, whether there are historic properties (defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places – 36 C.F.R. § 800.16(l)) within such area, and, if so, whether such properties may be affected and how to address any adverse effects.

EPA, in consultation with the Council or SHPO/THPO, as well as other interested parties, must first determine whether a project might affect historic properties that are included or eligible for inclusion on the National Register. This step is done by identifying whether there are historic properties in the project area. EPA reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Unlisted properties are evaluated against the National Park Service’s published National Register criteria, in consultation with the SHPO/THPO and any Indian Tribe or Native Hawaiian organization that may attach religious or cultural importance to them.

If EPA finds that historic properties are present, the next step is to assess possible adverse effects. Again, consultation must occur with the SHPO/THPO and other interested parties. SHPOs/THPOs have a standard 30-day response timeframe through the consultation process. If they agree that there will be no adverse effect, the agency proceeds with the undertaking and any agreed upon conditions. If the parties cannot agree or they find that there is an adverse effect, the agency begins consultation to identify ways to avoid, minimize, or mitigate adverse effects. This process also requires consultation with the SHPO/THPO and others, including Indian Tribes and Native Hawaiian organizations, local governments, and members of the public. If, because of disagreement among the appropriate parties, the agency cannot issue a determination that no historic or cultural properties are in the project area, that resources do exist in the project area but will not be adversely affected, or that adequate mitigating measures will be taken to avoid or reduce adverse effects to resources in the project area, the agency

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<sup>21</sup> Under relevant Section 106 implementing regulations, undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including: those carried out by or on behalf of the agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval (36 C.F.R. § 800.16(y)).



will then enter into consultations with all parties to resolve the dispute.

## **FLOOD PLAIN MANAGEMENT, EXECUTIVE ORDER 11988 AS AMENDED BY EXECUTIVE ORDER 13690**

Projects funded by WIFIA loans will meet or exceed applicable State, local, Tribal, and Territorial standards for flood risk and floodplain management, as well as Executive Orders 11988 and 13690, the Federal Flood Risk Management Standard, and the Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (Guidelines)<sup>22</sup>.

Applicants for proposed projects not involving new construction, substantial improvement, or to address substantial damage will be required to identify whether they are located in the floodplain by using, at minimum, the base 100-year floodplain standard for non-critical actions, and the 0.2%-annual chance floodplain for critical actions. Projects involving new construction, substantial improvement, or to address substantial damage to structures and facilities will use the expanded floodplain standard described in E.O. 13690. Substantial improvement and substantial damage include projects equaling or exceeding 50 percent of the value of the structure or facility. These project applicants shall determine whether the proposed project will occur in the floodplain using any of the approaches provided in Section 6(c) of Executive Order 11988, as amended. Applicants should follow the eight-step decision-making discussed in the Guidelines for their proposed projects and provide this information to EPA for review.

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<sup>22</sup> “Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” 80 Fed. Reg. 64008 (Oct. 22, 2015), available at <http://www.fema.gov/media-library/assets/documents/110377>.

# SECTION 3: STATUTORY TERMS AND CONDITIONS

## SECTION 3: STATUTORY TERMS AND CONDITIONS

The WIFIA program can structure WIFIA credit instruments to provide low cost, long-term, supplemental credit assistance under customized terms to qualified projects. To access these benefits, loans must comply with all statutory terms and conditions and programmatic credit policies. The statute authorizes the WIFIA program to provide both secured loans and guarantees on a loan or other debt obligation issued by a borrower and funded by a third-party lender.

This section summarizes the statutory terms and conditions that apply to WIFIA secured loans in both the WIFIA base program and the SWIFIA program. These terms and conditions support the requirement that projects must be deemed creditworthy by the Administrator to be eligible for WIFIA credit assistance. Credit policies established by EPA for the WIFIA base program are available in Section 4 and for the SWIFIA program in Section 9.<sup>23</sup>

### 3.1 STATUTORY TERMS AND CONDITIONS

The statute mandates several terms and conditions for WIFIA credit assistance. These requirements represent threshold inputs to the development of a finance plan and are as follows:

**Maximum Amount:** The amount of WIFIA credit assistance may not exceed 49 percent (or 80 percent for small communities of 25,000 people or less) of the reasonably anticipated eligible project costs, as defined in Section 2.6.<sup>24</sup> WIFIA credit assistance may not exceed the amount of the project's senior obligations unless the WIFIA credit instrument receives an investment-grade rating from a Nationally Recognized Statistical Rating Organization (NRSRO).<sup>25</sup>

**Maximum Federal Involvement:** Total federal assistance for any project may not exceed 80 percent of total project costs.<sup>26</sup>

**Interest Rate:** The WIFIA program offers fixed-rate credit instruments. The interest rate of the WIFIA credit instrument will be no less than the yield on U.S. Treasury securities of a similar maturity to that of the WIFIA credit assistance on the date of execution of the loan agreement.<sup>27</sup> To establish the interest

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<sup>23</sup> The WIFIA program does not anticipate immediate demand for the loan guarantee instrument based on experience from comparable government credit programs. Information about loan guarantee terms will be added in a subsequent version of the handbook. Prospective borrowers interested in a loan guarantee should contact the WIFIA program for additional information.

<sup>24</sup> The statute ([33 U.S.C. § 3908\(b\)\(2\)\(A\)](#)) authorizes EPA to use up to 25 percent of its budget authority appropriated through Fiscal Year 2019 to provide credit assistance to one or more projects of up to 80 percent of the total costs of any given project. EPA will use this authority only in extraordinarily exceptional circumstances. Opportunities to request more than 49 percent may be outlined in the NOFA.

<sup>25</sup> [33 U.S.C. § 3908\(b\)\(2\)\(B\)](#)

<sup>26</sup> The maximum federal involvement does not apply to certain rural water projects that are authorized to be carried out by the Secretary of the Interior, include federally-recognized Indian tribes among the beneficiaries and for which the authorized Federal share of the total project costs is greater than 80%. [33 U.S.C. § 3908\(b\)\(9\)\(B\)](#).

<sup>27</sup> [33 U.S.C. § 3908\(b\)\(4\)](#)

rate on the date of the loan closing, the WIFIA program will identify the Treasury rates using the [daily rate tables](#) for State and Local Government Series (SLGS) investments. The WIFIA program will then add one basis point to the SLGS rate. To estimate the yield on comparable Treasury securities, the WIFIA program will use a maturity that is closest to the weighted average loan life of the WIFIA credit assistance, measured from first disbursement. In limited circumstances, the program and the borrower may re-execute the WIFIA loan to re-set of the interest, as described in Appendix I.

**Maturity Date:** The final maturity date of the WIFIA credit instrument must be the earlier of 35 years after the date of substantial completion of the relevant project or the useful life of the project.<sup>28</sup> If the borrower is a State infrastructure financing authority, the final maturity date of WIFIA credit assistance must be no later than 35 years after the first disbursement of funds.

**Debt Service Payment Terms:** Scheduled payments on the WIFIA credit instrument must commence no later than five (5) years following substantial completion of the project.<sup>29</sup> The debt service payment schedule may be sculpted to accommodate the projected cash flow from project revenues and other sources. If the borrower is a State infrastructure financing authority, scheduled payments shall commence no later than five (5) years after the date of the first disbursement.

**Dedicated Source of Repayment:** WIFIA credit assistance must be repaid using a dedicated source of repayment or security pledge that is the same in all material respects as the security pledged to the project's senior obligations.<sup>30</sup> The WIFIA program interprets "dedicated revenue sources" to include such sources as taxes, rate revenue, transfers pledged from state or local governments, municipal general obligation pledges, general recourse corporate financing, project revenues, or other revenues that are pledged for the purpose of paying debt service on the WIFIA credit instrument.

**Deferrals:** Debt service payments on the WIFIA credit instrument, in accordance with the debt service payment schedule, may be deferred on a case-by-case basis. EPA may grant a deferral only if there remains a reasonable assurance of repayment of the WIFIA credit instrument and the final maturity of the WIFIA credit instrument remains unchanged. Under a deferral, any unpaid principal and interest will be added to the outstanding balance of the WIFIA credit instrument.

**Security Features:** WIFIA credit assistance shall include a rate covenant, coverage requirement, or similar security features supporting the project obligations.<sup>31</sup>

**Prepayment Conditions:** A borrower may prepay WIFIA credit assistance in whole or in part without penalty at any time.<sup>32</sup> WIFIA credit assistance may not be prepaid using federal funds.

**Lien Priority:** A WIFIA loan may not be subordinated in security and priority to other debt obligations such as bonds or SRF loans used to fund the project. A WIFIA loan may, on a case-by-case basis, be subordinate in priority and security to previous or future debt obligations an eligible entity may incur for other purposes unrelated to the WIFIA project. Such cases will generally be limited to highly rated public

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<sup>28</sup> [33 U.S.C. § 3908\(b\)\(5\)\(A\)](#)

<sup>29</sup> [33 U.S.C. § 3908\(c\)\(2\)](#)

<sup>30</sup> [33 U.S.C. § 3908\(b\)\(3\)\(A\)](#)

<sup>31</sup> [33 U.S.C. § 3908\(b\)\(3\)\(B\)](#)

<sup>32</sup> [33 U.S.C. § 3908\(c\)\(4\)\(B\)](#)

agency borrowers with on-going debt issuance programs (such as through a preexisting indenture) where the WIFIA loan is rated in the A category or higher.

**Fees:** All WIFIA credit assistance is subject to fees, as described in Appendix D, to cover all or a portion of EPA's costs associated with providing credit assistance.

**Non-Federal Share:** The proceeds of a secured loan may be used to pay any non-federal share of project costs required if the loan is repayable from non-federal funds.

# SECTION 4: BASE PROGRAM CREDIT POLICIES

## SECTION 4: BASE PROGRAM CREDIT POLICIES

EPA must deem a project creditworthy for it to be eligible for WIFIA credit assistance. In support of this requirement, the WIFIA program has established credit policies. These policies influence the structuring of projects' financing plans and guide the WIFIA program's creditworthiness determination.

### 4.1 CREDIT POLICIES

**Disbursement Timing:** The WIFIA program will disburse proceeds of the WIFIA credit instrument to reimburse eligible project costs incurred based on submitted invoices and receipts. Disbursements may be scheduled as often as once per month.

**Credit Rating Opinions:** Credit ratings from NRSROs will supplement but not supplant the WIFIA program's evaluation and determination of creditworthiness.

**Federal Appropriations:** The WIFIA program will not consider proposals for financial assistance from prospective borrowers whose creditworthiness is significantly dependent on future federal appropriations.

**Interest Capitalization:** WIFIA credit assistance may capitalize interest as warranted by the cash flow profile of the project. The WIFIA program will review the transaction's resulting capital structure, creditworthiness, and uses of any excess cash prior to accepting any proposed interest capitalization periods that are post substantial completion of the project.

**Amortization Requirement:** The WIFIA program will seek to amortize the WIFIA credit instrument over the useful life of the project. In some instances, the WIFIA program may require borrowers to prepay the WIFIA credit instrument with excess revenues, refinancing proceeds, or trapped cash flow, as appropriate.

**Variable Rate Interest Exposure:** The WIFIA credit instrument will not be exposed to material amountsof variable rate debt in the borrower's capital structure.

**Additional Debt:** If the financial structure permits future additional indebtedness, EPA will require an additional indebtedness test to ensure that such issuances do not weaken the creditworthiness of the WIFIA credit instrument over the long term.

**Useful Life of Projects:** In determining the useful life of a project, EPA will consider the operational lifeof the key asset(s) being financed, the capability of the project to generate cash flow over time, the certainty of project cash flows over time, and other existing and potential demands on project cash flows over the term of the WIFIA credit instrument.

# SECTION 5: LOAN PROCESS SUMMARY

## SECTION 5: LOAN PROCESS SUMMARY

This section provides a high-level overview of the loan process for both Base program and SWIFIA loans. Figure 5-1 illustrates the three phases of the loan process: project selection, project approval, and project monitoring. Detailed information about the Base program is provided in sections 6 through 8, and SWIFIA program processes are included in sections 9 and 10.

FIGURE 5-1: WIFIA PROGRAM LOAN PROCESS



**Phase 1: Project Selection:** Each year, the WIFIA program receives an appropriation that replenishes the amount of funding that can be made available to prospective borrowers. With that appropriation, EPA also announces priorities that help the WIFIA program support the Agency’s mission and strategic goals. EPA announces this funding in a Notice of Funding Availability (NOFA) published in the [Federal Register](#) and the [WIFIA program website](#). In the LOI, prospective borrowers provide information that EPA uses to determine the project’s eligibility, creditworthiness, engineering feasibility, and alignment with EPA’s policy priorities. In addition, OMB evaluates whether the project complies with [budgetary scoring rules](#). Based on these reviews, EPA selects projects which it intends to fund and invites them to continue to the application process.

Like a bank, the WIFIA program has funding available on an ongoing basis. This allows prospective borrowers to request financing on their schedule. A rolling selection process allows EPA to provide year-round access to WIFIA funding and quicker selection decisions to prospective borrowers. In addition, under this iterative, rolling selection process, the WIFIA program can provide technical assistance to prospective borrowers, particularly disadvantaged and small communities, that need support to complete their LOI package.

**Phase 2: Project Approval:** Each invitee must submit an application for WIFIA credit assistance. Using this information, the WIFIA program conducts a detailed evaluation of the project. For the Base program, the EPA proposes terms and conditions for the project and negotiates with the applicant until they develop a mutually agreeable term sheet and loan agreement. For the SWIFIA program, the EPA

develops the term sheet and loan agreement by either accepting the applicant's existing capital market debt indenture (to the extent the terms are permissible under Federal law and regulation and WIFIA program policies) or using the SWIFIA template term sheet and loan agreement. Prior to closing, the WIFIA program must receive approval from the Administrator or his designee and the Office of Management and Budget (OMB). At closing, EPA and the applicant execute the term sheet, which obligates the WIFIA funds, and the loan agreement, which is the binding legal document that allows the borrower to receive WIFIA funds.

**Phase 3: Project Monitoring:** Following loan closing, borrowers must meet several requirements to receive funding and remain in compliance with the loan agreement. This section describes the post-closing activities involving WIFIA borrowers in three categories: disbursements, loan servicing, and loan monitoring. The executed loan agreement will identify specific requirements pertaining to each credit instrument.

Table 5-1 describes the steps that are undertaken during each phase of the loan process. During the WIFIA loan process, the WIFIA program interacts with entities both within and outside EPA. These entities are listed in Figure 5-2 and described below.

Table 5-1: WIFIA Program Loan Process

Phase	Step	Responsible Party
Project Selection	<b>Notice of Funding Availability (NOFA)</b> Submit NOFA to Federal Register	Administrator
	<b>LOI Submission</b> Prepare the LOI and submit it to the WIFIA program	Prospective borrower
	<b>LOI Evaluation</b> Confirm eligibility of projects and prospective borrowers, perform LOI evaluation; OMB will review all projects for federal scoring	WIFIA program, OMB, and Office of Water Staff
	<b>Project Selection</b> Select eligible projects to invite to apply based on LOI	Selection Committee
	Invite prospective borrowers to apply	WIFIA program
Project Approval	<b>Application Submission</b> Prepare and submit the application, including a preliminary rating opinion letter and the application fee	Applicant
	<b>Application Evaluation</b> Evaluate and determine creditworthiness of the applications	WIFIA program
	Develop mutually agreed-upon terms and conditions for WIFIA credit assistance	WIFIA program and applicant
	<b>Project Recommendations</b> Prepare and present a recommendation for the project to the Credit Council	WIFIA program
	Review and approve credit subsidy estimation	OMB
	Prepare and present a recommendation for the project to the Administrator	Credit Council and WIFIA program
	<b>WIFIA Credit Assistance Approval</b> Approve the loan, sign the term sheet and loan agreement	Administrator
	Inform the prospective borrower of the Administrator's decision	WIFIA program
	<b>Closing Activities</b> Demonstrate fulfillment of conditions precedent to closing	Applicant
	Execute term sheet and loan agreement	Administrator or designee and applicant

Will occur on a rolling basis as LOI are received



Phase	Step	Responsible Party
Project Monitoring	<b>Disbursement Processing</b>	
	Submit a requisition form to verify compliance	Borrower
	Process disbursements within 15 days	WIFIA program
	<b>Loan Servicing</b>	
	Charge annual fee for loan servicing activities	WIFIA program
	<b>Loan Monitoring</b>	
	Monitor credit risk to detect financial deterioration and/or changes	WIFIA program
	Implement compliance management and monitoring processes	WIFIA program
Collect and analyze borrower data for program evaluation	WIFIA program	

Figure 5-2: WIFIA Program Loan Process Entities



The **EPA Administrator** grants final approval of applications for WIFIA credit assistance and executes the loan agreement at closing (execution of the loan agreement may be delegated to the Assistant Administrator for the Office of Water). The Administrator sets policy and priorities for EPA and for the WIFIA program.

**OMB** reviews and approves the final credit subsidy cost before the Administrator can approve any application for WIFIA credit assistance. In addition, OMB gives EPA the authority to commit resources via an apportionment. In addition, OMB reviews projects for federal project determination.

A **Credit Council** serves in an advisory capacity to EPA. It reviews the findings of the WIFIA program and advises the Administrator or his designee regarding the creditworthiness of applications. It also advises the Program Director and approves the WIFIA program's credit policies, which influence the terms and conditions offered for WIFIA credit assistance.

A **Selection Committee** chooses projects to invite to submit applications for WIFIA credit assistance. Office of Water senior managers, including representatives from both the Office of Wastewater

Management and the Office of Ground Water and Drinking Water, serve on the Selection Committee.

The **WIFIA Program** coordinates the LOI selection process, including evaluating the eligibility of the project, borrower, and costs. It also manages the application review process, including negotiating loan agreements to ensure that the government's interest is protected and estimating the credit subsidy for the projects. After loan closing, the WIFIA program monitors all the loans in its portfolio until final repayment.

# SECTION 6: BASE PROGRAM PROJECT SELECTION

## SECTION 6: BASE PROGRAM PROJECT SELECTION

This section describes the first phase of the WIFIA program loan process for the base program, which includes the release of the NOFA, the submission of LOI, the evaluation of LOI, and the selection of projects to invite to apply.

Prospective borrowers may contact the WIFIA program by email ([wifia@epa.gov](mailto:wifia@epa.gov)) during this phase of the loan process.

*Figure 6-1: WIFIA Program Loan Process Phase 1: Project Selection*



### 6.1 NOTICE OF FUNDING AVAILABILITY (NOFA)

Annually, EPA will publish the NOFA in the [Federal Register](#) and on the [WIFIA program website](#). Each NOFA will specify the amount of additional funding available to support WIFIA credit assistance, EPA's priorities for the selection round, the weight given, if any, to each selection criterion, and instructions for submitting a LOI. EPA may also include in the NOFA additional eligibility requirements, set-asides, or priorities as mandated by the appropriating legislation.

Like a bank, the WIFIA program has funding available on an ongoing basis. This allows prospective borrowers to request financing on their schedule. A rolling selection process allows EPA to provide year-round access to WIFIA funding and quicker selection decisions to prospective borrowers. In addition, under this iterative, rolling selection process, the WIFIA program can provide technical assistance to prospective borrowers, particularly disadvantaged and small communities, that need support to complete their LOI package.

### 6.2 LETTER OF INTEREST SUBMISSION

Prospective borrowers must submit a LOI pursuant to the instructions in the NOFA to be considered for WIFIA credit assistance in a selection round.

In the LOI, prospective borrowers provide the WIFIA program with enough information to:

- Validate the eligibility of the prospective borrower and the proposed project;
- Perform a preliminary creditworthiness assessment;
- Perform a preliminary engineering feasibility analysis; and
- Supply the WIFIA program with information to evaluate the project against the selection criteria defined in the NOFA.

## COMPONENTS

The LOI contains the following sections:

**A. Key Loan Information:** In this section, the prospective borrower provides a general description of the project, purpose, loan amount, total eligible project costs, application submission date, loan close date, and population information. The prospective borrower also includes information such as its legal name, address, website, Unique Entity ID from SAM.gov, and employer/taxpayer identification number. In the case of a project that is undertaken 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 that the entity is undertaking must be publicly sponsored. Public sponsorship means that the prospective borrower can demonstrate, to the satisfaction of the EPA, that it has consulted with the affected state, local, or tribal government in which the project is located, or is otherwise affected by the project, and that such government supports the proposed project. A prospective borrower can show support by including a certified letter signed by the approving state, tribal, or municipal department or similar agency; governor, mayor, or other similar designated authority; statute or local ordinance, or any other means by which government approval can be evidenced.

**B. Engineering & Credit:** In this section, the prospective borrower provides any planning, preliminary design, and engineering documents, information about federal or state environmental reviews, resource specific technical reports (e.g., biological or technical resources) related to the proposed project. If not available, the prospective borrower should provide a detailed description of the project. Also, a high-level schedule of dates for each of the project or projects is included as part of the LOI. To evaluate creditworthiness, the prospective borrower will provide the preferred lien priority for the WIFIA loan and a current rating letter. If the prospective borrower does not have a current rating letter, they may provide a pro forma financial statements and a budget.

**C. Selection Criteria:** In this section, the prospective borrower describes the potential policy benefits achieved using WIFIA assistance with respect to each of the WIFIA program selection criteria. These criteria and their weights are enumerated in the NOFA and further explained in Appendix C.

**D. Contact Information:** In this section, the prospective borrower identifies the point of contact with whom the WIFIA program should communicate regarding the LOI. To complete the EPA's evaluation, the WIFIA program staff may contact a prospective borrower regarding specific information in the LOI.

**E. Certifications:** In this section, the prospective borrower certifies that it will abide by all applicable

laws and regulations, including NEPA, the Build America, Buy America Act requirements, the American Iron and Steel requirements, and federal labor standards, among others, if selected to receive funding.

**F. SRF Notification:** In this section, the prospective borrower acknowledges that the EPA will notify the State infrastructure financing authority in the state in which the project is located that it submitted a LOI and provide the submitted LOI and source documents to that authority. The prospective borrower may opt out of having its LOI and source documents shared.

Prospective borrowers must use the LOI form provided on the [WIFIA website](#) to complete their LOI. In cases where there are differences between the guidance in this document and the guidance on the electronic form, the latter should dictate the prospective borrower's response.

For a LOI to be deemed complete and considered for selection, prospective borrowers must submit the LOI and all referenced source documents to EPA as described below. Source documents may be draft or preliminary. Please provide the most recent version available at the time of submission. Prospective borrowers may wish to assert a business confidentiality claim covering part or all the information included in the LOI form or referenced source material. Further information, including a definition of "confidential business information (CBI)," the process for asserting confidentiality, and the information EPA will require from a prospective borrower to substantiate the claim, can be found in Appendix F. Please be aware that EPA reserves the right to request substantiation at any time following a business confidentiality claim.

To submit the documents:

1. Upload the documents to EPA's SharePoint site. To be granted access to the SharePoint site, prospective borrowers must request access to SharePoint by emailing [wifia@epa.gov](mailto:wifia@epa.gov); and
2. Confirm that the complete LOI package has been uploaded to the SharePoint site by sending an email to [wifia@epa.gov](mailto:wifia@epa.gov).

EPA will provide a confirmation email.

If EPA receives a LOI that is incomplete, it will notify the prospective borrower of the deficiency and provide feedback on steps to take and/or documents to develop for the LOI package to be deemed complete and ready for review by the WIFIA staff.

### 6.3 LETTER OF INTEREST EVALUATION

The WIFIA program will select projects on an ongoing basis that satisfy the eligibility requirements and selection criteria scoring requirements as described in the NOFA to be invited to apply. EPA will only select projects which are reasonably anticipated to be able to meet the eligibility requirements and for which the WIFIA program has sufficient funding. This helps to ensure the potential borrowers do not expend time and financial resources, including incurring fees associated with applying, for a loan that is not likely to proceed to financial close.

EPA will assess LOI by performing an eligibility screening, a preliminary creditworthiness assessment, a preliminary engineering feasibility analysis, and an evaluation of the selection criteria.

## ELIGIBILITY SCREENING

Upon receipt of a LOI, the WIFIA program validates that the prospective borrower is an eligible entity as described in Section 2.1 and the proposed project is an eligible project as described in Section 2.2. Eligible projects are concurrently reviewed for creditworthiness, engineering feasibility, and selection criteria evaluation, as described below.

## SELECTION CRITERIA

The statute requires that the WIFIA program evaluate projects using selection criteria. The statute established eleven (11) criteria, to which the [implementation rule](#) adds two (2) additional criteria. The rule also allows EPA to add criteria in a NOFA. EPA has added three (3) additional criterion in the NOFA. The WIFIA selection criteria are divided into three categories that represent critical considerations for selecting projects: Project Impact, Project Readiness, and Borrower Creditworthiness.

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 of the criteria for each category. For the Project Impact category, WIFIA staff will score LOI based on the points indicated below.

The Selection Committee will review that score, in combination with the results reviews of the other categories to make their selection decision. All projects that satisfy category level review for all three categories will be invited to apply for a WIFIA loan. The WIFIA program evaluates the criteria as described in Appendix C. Table C-1, located in Appendix C, provides a crosswalk between the LOI and the selection criteria outlined below. The WIFIA program selection criteria are as follows:

### PROJECT IMPACT

1. 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.
2. The extent to which the project (1) protects against extreme weather events, such as floods or hurricanes; or (2) helps maintain or protect the environment.
3. The extent to which the project serves regions with significant energy exploration, development, or production areas.
4. 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.

5. The extent to which the project addresses identified municipal, State, or regional priorities.
6. 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.
7. The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non economically stressed communities.
8. The extent to which the project reduces exposure to lead in the nation’s drinking water systems or addresses emerging contaminants.
9. The extent to which the project uses new or innovative approaches.

#### **PROJECT READINESS**

1. 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].
2. Preliminary engineering feasibility analysis (see below for more information).

#### **BORROWER CREDITWORTHINESS**

1. 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.
2. The extent to which the project financing plan includes public or private financing in addition to assistance under [WIFIA].
3. The extent to which assistance under [WIFIA] reduces the contribution of Federal assistance to the project.
4. The amount of budget authority required to fund the Federal credit instrument made available under [WIFIA].
5. Preliminary creditworthiness assessment (see below for more information).

In addition to the selection criteria score, EPA is required by 33 U.S.C. § 3902(a) to “ensure a diversity of project types and geographical locations.”

#### **PRELIMINARY CREDITWORTHINESS ASSESSMENT**

Following the determination of eligibility, the WIFIA program will perform a preliminary creditworthiness assessment. The preliminary creditworthiness assessment has two purposes:



- To evaluate whether the credit assistance requested by the prospective borrower has a reasonable assurance of repayment.
- To estimate the amount of budget authority necessary to fund such WIFIA credit assistance.

Prospective borrowers should describe the proposed security (e.g., water utility revenue or general obligation) and priority of the payment (senior or subordinate to existing debt). If available, they should provide an existing credit rating on the same security and priority as the WIFIA loan. If a credit rating on the same security and priority as the WIFIA loan is not available, then prospective borrowers must submit a financial pro forma and three years of audited financial statements. More details on what should be included in the pro forma is available in the LOI form and the sample financial pro forma which are available at: <https://www.epa.gov/wifia/wifia-application-materials>. The WIFIA program will use this information to determine historic financial performance (for established entities) as well as the strength of the proposed revenue pledge by evaluating revenue and expense projections including coverage ratios and growth trends.

### PRELIMINARY FEASIBILITY ANALYSIS

The WIFIA program will perform a preliminary engineering review to evaluate whether the project is technically feasible based on the information submitted with the LOI. The purpose of this review is not to provide input on project design but to ensure the project can be completed on time and within budget. Please refer to Appendix H for an overview of how EPA will assess the appropriate level of National Environmental Policy Act (NEPA) review for a project. EPA does not complete the NEPA analysis during the LOI phase; further, compliance with NEPA is not a prerequisite for submitting a LOI, being invited to apply for a WIFIA loan, or submitting an application as discussed in Section 2.7.

As part of the of the preliminary engineering assessment, the WIFIA program will also evaluate a project's readiness to proceed toward development, including loan closing and when construction will begin.

## 6.4 OMB BUDGETARY SCORING DETERMINATION

Projects seeking WIFIA loans will be assessed by OMB to determine compliance with budgetary scoring rules, a process that will be conducted in parallel to EPA's LOI evaluation process outlined in section 6.3. The WIFIA program will provide OMB with responses to two initial screening questions and sixteen scoring factors to assist OMB to make this determination. The questions may be found in Federal Register publication: Water Infrastructure Finance and Innovation Act Program (WIFIA) Criteria Pursuant to Public Law 116-94 85 FR 39189, June 30, 2020<sup>33</sup>. If the prospective borrower has additional documentation that would help the WIFIA program answer the questions and OMB make this determination, the prospective borrower may submit it as an attachment to the LOI. The WIFIA program may contact prospective borrowers after the LOI is submitted if clarification is needed to answer the budgetary scoring determination questions. EPA may not select a borrower and project to apply until OMB provides a determination that the project is in compliance with budgetary scoring rules.

<sup>33</sup> <https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13889.pdf>

## 6.5 PROJECT SELECTION

At the end of the WIFIA program staff's analysis, the program determines whether the project satisfies each category of criteria (Project Impact, Project Readiness, and Borrower Creditworthiness). Based on that analysis, the WIFIA program recommends to the Selection Committee whether the project should be invited to apply. Selected projects will typically be invited to apply for a WIFIA loan in the amount requested in the LOI.

The WIFIA program will provide prospective borrowers written notifications inviting them to submit an application for WIFIA credit assistance, notifying them that they have not been selected, or explaining what additional information is needed to complete the LOI package. Selected entities will receive information about the location of the latest application materials. The WIFIA program will post basic information about the selected projects on its website. Such information will include a project description, requested loan amount, total project cost, and approval status.

Prospective borrowers that are invited to apply and do not plan to submit an application for WIFIA credit assistance are asked to notify the WIFIA program immediately to allow other prospective borrowers to be invited. Prospective borrowers that were not selected, or from which additional information is needed to complete their LOI package, will receive information for scheduling a call to discuss their LOI and how it can be improved.

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, OMB's determination of budgetary scoring rule compliance, 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 projects to apply if it anticipates that those projects can obtain WIFIA credit assistance.

## 6.6 REVIEW TIMELINE

The project selection process, from submission of a complete LOI package through inviting the prospective borrower to submit an application, typically takes eight (8) weeks or less, once all outstanding questions have been addressed. For more complex LOI or unique situations, the project selection process can take longer. The WIFIA team will work with prospective borrowers to make the project selection process as expeditious as possible. EPA examines and reviews LOI beginning immediately after confirmation that a complete LOI package has been submitted. EPA will then evaluate the project and LOI package, after which an invitation to apply (or notice of non-selection or need for additional information) is sent to the prospective borrower.

# SECTION 7: BASE PROGRAM PROJECT APPROVAL

## SECTION 7: BASE PROGRAM PROJECT APPROVAL

This section describes the process by which EPA approves projects for WIFIA credit assistance. This is the second phase of the loan process. It includes a description of the steps that prospective borrowers follow to submit an application for WIFIA credit assistance. It also describes the WIFIA program's detailed evaluation review and approval process, which includes the negotiation and finalization by the WIFIA program of the terms of credit assistance to an applicant. This process culminates in the execution of a term sheet and loan agreement by the Administrator.

*Figure 7-1: WIFIA Program Loan Process Phase 2: Project Approval*



### 7.1 PRE-APPLICATION

After WIFIA notifies the prospective borrower that they are invited to apply, the prospective borrower will begin working with a member of the WIFIA origination team, who is the primary point of contact and will lead the WIFIA program's overall efforts. The origination team member schedules an introductory call and regular check-in calls to discuss the project, explain the WIFIA application process, and answer any questions. The prospective borrower will also provide the origination team member with a timeframe for when they plan to submit the application. This origination team member and the prospective borrower will work together pre-application submission to ensure a successful submission.

### 7.2 APPLICATION SUBMISSION

The second phase of the project review process begins when a prospective borrower who has been invited to apply for WIFIA assistance submits a complete application, including a preliminary rating opinion letter and the application fee. EPA anticipates that prospective borrowers will need less than one year to complete applications. The WIFIA program will only review applications submitted in response to an invitation to apply.

In the application, a prospective borrower updates information submitted in the LOI and provides the WIFIA program with the materials necessary to evaluate the creditworthiness of the prospective borrower and project for the proposed WIFIA credit assistance and the engineering due diligence, including federal compliance. Applicants may wish to assert a business confidentiality claim covering

part or all the information included in the application or referenced source material. Further information, including a definition of “confidential business information (CBI),” the process for asserting confidentiality, and the information EPA will require from an applicant to substantiate the claim, can be found in Appendix F. Please be aware that EPA reserves the right to request substantiation at any time following a business confidentiality claim.

Applicants should submit completed applications that include all components on the application checklist. The completed application package must be uploaded to WIFIA’s SharePoint site. To be granted access to the WIFIA SharePoint site, the applicant may email their assigned WIFIA Underwriter with the names and emails of all staff that need access.

## COMPONENTS

The following list outlines the elements of an application. However, it is not an exhaustive list of the items that may be required of the applicant. Additional items may be requested on a case-by-case basis. The application contains the following components:

- 1. Key Applicant and Loan Information:** The applicant provides basic information such as its legal name, project name, estimated total projects costs, requested WIFIA loan amount, anticipated closing date, and contact information. The applicant also provides information about jobs, savings, Unique Entity ID from SAM.gov, and employer/taxpayer identification number.
- 2. Applicant Background:** Materials submitted under this section detail the applicant’s legal authority to apply for a WIFIA loan and to undertake the project and disclose any current, threatened, or pending litigation. The applicant provides customer concentration analysis, water and sewer rate information, capital improvement planning process information, any accounts receivable outstanding information, the latest condition assessment report or a master plan.
- 3. Financing Plan:** The applicant submits a comprehensive plan describing how the project will be financed and how financing will be repaid over the tenor of the requested WIFIA loan. This includes a detailed financial model covering all periods through final maturity of the WIFIA loan, the sources and seniority of other financing, a description of the dedicated sources of repayment, rate covenants, and security for the requested WIFIA loan. The applicant also submits a preliminary rating letter from a NRSRO indicating the potential of the project’s senior obligations obtaining an investment-grade rating. This rating on the senior debt should include an analysis of the proposed WIFIA loan and the rating letter should specify the default risk of the WIFIA loan, as well. The applicant also provides its proposed terms and conditions for the WIFIA loan.
- 4. Federal Requirements Compliance:** The applicant describes the status of the environmental review and the status of the State Revolving Funds (SRF) environmental review, if applicable. The applicant also identifies any cross-cutter consultations that have been undertaken and any major permits or approvals required. Cross-cutting federal authorities are the requirements of other federal laws and Executive Orders that apply in federal financial assistance programs, like the WIFIA program.

5. **Contract Information:** The applicant fills out a separate Excel spreadsheet with specific contract information including contract components, project information within each contract, the project delivery method, and filenames of technical reports. The applicant also provides information about costs, schedules, operations and maintenance plans, and final or draft bid specifications for the project(s).
6. **Certifications:** The applicant certifies that it will abide by all applicable laws and regulations, including NEPA and the Davis-Bacon wage rules, as described in Section 2.7 and in Appendix E.

## RATING OPINION LETTERS

### PRELIMINARY RATING

As a measure of a project's creditworthiness, WIFIA requires each applicant to provide, at the time of application, a preliminary rating opinion from at least one NRSRO indicating that the senior obligations of the project (which may be the federal credit instrument) have the potential to achieve an investment-grade rating.<sup>34</sup> The WIFIA program will not consider an application complete until an applicant has provided a preliminary rating opinion letter, or preferably, a detailed rating article from an NRSRO website. For the preliminary rating, WIFIA accepts an existing rating on bonds that are on parity with the proposed WIFIA loan.

The preliminary rating opinion letter is a credit assessment from an NRSRO that provides a preliminary indication of the project's overall creditworthiness and specifically addresses the potential of the project's senior debt obligations to achieve an investment-grade rating and the default risk of the WIFIA loan. Since the indicative rating is performed at an early stage of application, the credit analysis is not expected to include comprehensive information about the loan structure. Instead, the indicative rating should provide an opinion about the potential to reach a credit rating based on a set of assumptions. The indicative rating may be based on the best information available, and assumptions provided by the applicant that may change during negotiation.

### FINAL RATING

The statute requires that prior to execution of the loan agreement, each applicant provide the WIFIA program with a final rating opinion from a NRSRO indicating that the senior obligations of the project have an investment-grade rating.<sup>35</sup> The WIFIA implementation rule at 40 C.F.R. § 35.10040(b) further clarifies that the rating should provide commentary on the default risk of the WIFIA loan. Since the final rating is issued after terms and conditions are established and when final documents are drafted, the rating should reflect the specific credit terms of the transaction.

The final rating should preferably be a public rating. The credit assessment should specifically evaluate the WIFIA loan's default risk and should contemplate the full life of the WIFIA credit instrument. In limited circumstances, the final rating requirement may be satisfied by an existing rating on bonds that are on parity with the proposed WIFIA loan. Questions about the rating requirements should be directed to the WIFIA transaction team.

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<sup>34</sup> [33 U.S.C. § 3907\(a\)\(1\)\(D\)\(i\)](#)

<sup>35</sup> [33 U.S.C. § 3907\(a\)\(1\)\(D\)\(ii\)](#)

Applicants should contact the WIFIA program with any questions regarding the rating process and the requirements for preliminary and final investment-grade credit rating opinions on the senior obligations and the WIFIA loan. The NRSROs will be able to answer questions concerning fees, timing of assessments, information requirements, and surveillance practices associated with obtaining preliminary opinion letters, credit ratings, periodic rating updates, and credit surveillance reports.

## FEES<sup>36</sup>

The WIFIA program requires each applicant to reimburse the federal government for its cost of providing credit assistance and the costs of retaining expert firms, including legal, engineering, and financial advisory services needed to review its application materials, negotiate, and close the loan agreement. These fees can be financed by the WIFIA loan as eligible project costs.

The WIFIA program will require the following fees from applicants as part of the application process. Total fees associated with the application process are estimated to be between \$250,000–\$350,000 per application. These fees will be updated in the Federal Register, as appropriate.

- **Application Fee:** For projects serving communities of less than 25,000 people, the application fee is \$25,000. For all other applicants, the application fee is \$100,000. The application fee is payable upon submission of the application, without which the application will not be evaluated. The application fee is non-refundable and is credited to the credit processing fee.
- **Credit Processing Fee:** The credit processing fee is payable upon the execution of the loan agreement. It reimburses EPA for its costs to provide credit assistance, including retaining legal, financial, engineering, and other expert contractor services. Due to the nature of this fee, the amount is expected to vary between applicants. However, the WIFIA program estimates these costs at between \$100,000–\$300,000 per applicant, a portion of which may be waived at the discretion of the WIFIA program. If an application is rejected or withdrawn, the applicant is still required to reimburse the costs incurred to EPA.

In addition to the fees required as part of the application process, the WIFIA program may charge the following fees when deemed necessary:

- **Optional Supplemental Fee:** Although it is unlikely that a scenario will arise under which it would assess this fee, the WIFIA program will allow an applicant to “buy down” the credit subsidy required for the credit instrument. This could allow an applicant to proceed to closing if sufficient credit subsidy is not otherwise available. This fee will only be charged upon agreement by an applicant.

## 7.3 APPLICATION EVALUATION

After receiving a complete application, the WIFIA program assigns a transaction team consisting of an underwriter, engineer, environmental reviewer, attorney, and risk manager to evaluate the transaction. This transaction team conducts financial, technical, and environmental reviews of the project, the borrower, and the borrower’s financing framework. The WIFIA program may retain the services of

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<sup>36</sup> The fee rule can be found in the [Federal Register](#).

financial advisors, outside legal counsel, and engineering firms during the application evaluation through closing. Through the credit processing fee, the applicant will reimburse EPA for the cost to underwrite the loan that exceed the application fee.

## **APPLICATION INTAKE**

The WIFIA program will first validate that the application submitted by the applicant contains all the requested elements and request missing documents, as necessary. For an application to proceed to evaluation, the applicant must pay the application fee, provide the preliminary rating opinion letter from a NRSRO, and submit a signed application. The WIFIA program will also confirm that the application continues to meet the eligibility requirements.

## **DETERMINATION OF CREDITWORTHINESS**

By statute, every project and borrower that receives a WIFIA loan must be creditworthy. During the creditworthiness review, the WIFIA transaction team evaluates the risk to the government to lending to the prospective borrower with the requested loan structure and contemplates potential mitigants to bring the risks to an acceptable level. Since EPA will likely hold the loan to its maturity, the WIFIA program needs to consider risks that could emerge throughout the repayment term. To do this, the team reviews the detailed information provided, undertakes quantitative analysis using a financial model, and develops its own internal risk rating.

The WIFIA program will base the creditworthiness determination on a review of all the following:

- Terms, conditions, financial structure, and security features of the proposed financing.
- Dedicated revenue source(s) securing the financing.
- Financial assumptions surrounding the proposed project.
- Financial soundness and credit history and outlook of the borrower.
- Strength of the business model and project economics.
- Technical merits and engineering risks of the proposed financing.

The following sections describe the process that will be used to assess the creditworthiness of a project in greater detail. This process involves the determination of the credit type and an assessment of key risks associated with that credit type and an assessment of the prospective project against a general credit assessment framework.

The WIFIA program's determination of creditworthiness must be based on realistic and probable inputs.

## **DETERMINATION OF CREDIT TYPE AND CREDIT INSTRUMENT ATTRIBUTES**

Given the WIFIA program's ability to accommodate different types of applicants and uses of funds, the determination of creditworthiness will include an assessment of each application to develop a clear understanding of the following:

- The applicant, including its credit history and structure.



- The proposed project, including any risks that will be especially relevant.
- The source or sources of repayment.

These characterizations will allow the WIFIA program to tailor its assessment of creditworthiness based on the proposed credit instrument's specific credit attributes and the corresponding risk exposures associated with those attributes. The WIFIA program anticipates evaluating balance sheet/general recourse corporate borrowings, public financings, and non-recourse borrowing/project financings, and will conduct financial and risk analyses based on the associated criteria. The following section outlines the framework that will be used to assess each application for credit assistance.

## CREDIT ASSESSMENT CRITERIA

In general, the WIFIA program will review every proposed credit instrument based on a framework that will focus on the five categories outlined below. As noted above, each project will have exposure to its own distinctive combination of risks and each application will be assessed with a focus on its specific risks. The descriptions that follow provide examples of assessment criteria, but are not meant to be an exhaustive list:

- **Financial Strength:** Each proposed use of funds will include a detailed financial plan and projection of future cash flow generation. The WIFIA program will verify that the project is expected to produce sufficient revenues to service the project's debt obligations through final maturity. Projects must demonstrate adequate liquidity and debt service coverage under the financial modeling assumptions and reasonable sensitivity cases. The WIFIA program may consider the following criteria:
  - Each proposed use of funds should be financially sound and offer a projection of revenue generation based upon reasonable assumptions that would provide sufficient coverage to repay the proposed credit instrument.
  - By statute, the credit instrument must be repayable in whole or in part from a dedicated source.
  - The capital structure for a project receiving WIFIA credit assistance should allow for adequate net cash flow after meeting all necessary obligations to ensure that the credit instrument is reasonably insulated from unexpected events.
- **Business/Economic Considerations:** Each type of credit will be influenced by its individual business model, the product/services delivered to customers, and the economic conditions at the site of the proposed use of funds. The WIFIA program may consider the following in the assessment of the business characteristics and the local economy:
  - The structure of the applicant's business model, including an analysis of the product or service being delivered and the appropriateness of rates with respect to the income levels of the population served.
  - The predictability of the applicant's revenues, which may include a review of offtake agreements, the service territory, or the franchise, as applicable.
  - The service area's resource endowments, long-term economic planning, economic growth,



labor force trends, and ability to withstand economic cycles.

- **Management and Counterparties:** The WIFIA program will evaluate the applicant and any key counterparties, such as sponsors, contractual partners, project management, and design and construction teams based on their experience, ability to work as a team, and ability to deliver upon the proposed financing. In its evaluation, it may consider the following criteria:
  - The applicant and key counterparties demonstrate technical, managerial, and financial capacity to perform their respective responsibilities within the proposed use of funds.
  - All participants have sufficient assets to meet their obligations.
  - All participants have a demonstrable record of success.
  - Management is capable of abiding by all relevant federal, state, and local regulations during the pre-construction and construction process, and during operation.
  - If multiple counterparties exist, parties share the balance of risk appropriately.
- **Engineering Considerations:** The WIFIA program will assess every proposed use of funds for any pre-construction risk, construction risk, and technology risk through the engineering due diligence process described below.
- **Loan-Specific Factors:** The WIFIA program will assess an applicant's other existing and proposed credit instruments based on the terms and conditions and attendant risk to the WIFIA credit instrument. It may include the following in its assessment:
  - The loan tenor, repayment profile, and lien priority of the proposed credit instrument, given the risk profile of the credit assistance.
  - The strength of the proposed security features such as reserve funds, rate covenants, and additional indebtedness restrictions.

These categories are overarching and provide a general framework for the creditworthiness assessment of every application which can be adjusted to fit the risk profile of each proposed project. Following the assessment of each application based on the overarching categories, and the more detailed analysis guided by the specific attributes of the proposed project, the WIFIA program will make an initial determination of creditworthiness.

## ENGINEERING DUE DILIGENCE

The WIFIA program will analyze the project and the system condition to determine if there are major technical risks that could impact the project or the pledged revenue stream. It will assess the technical soundness of the project by reviewing project design plans, specifications, procurement documents, technical reports, and other associated documents. These should be developed in accordance with professional standards and federal, state, and local requirements. The due diligence will include the following:

- **Technical Soundness:** The proposed project technology should be appropriate for its intended use and consistent with the scope proposed in the LOI. Technical feasibility should be demonstrated based on detailed engineering information. The WIFIA program will assess the

overall constructability and operability of the proposed project and project plans and design assumptions adherence to industry standards. The WIFIA program assessment does not relieve the prospective borrower of responsibility for the project design. For Alternative Project Delivery methods, such as Design-Build or Construction Manager-at-Risk, the WIFIA program will review procurement documents for technical soundness in lieu of detailed design plans.

- **Technical Risk Factors:** The project should demonstrate protection from construction completion risk. The WIFIA program will assess potential construction and operation risks and associated mitigation strategies. The WIFIA program will also document additional technical reviews a project is expected to incur, such as state construction permit reviews, which further mitigates technical risk.
- **Construction Cost Estimate Assessment:** Estimated project costs should be reasonable and eligible. The WIFIA program will assess the suitability of the cost estimating methodology and unit costs as compared to the project scope and industry standards. The cost estimate should also include adequate contingencies as compared to the local market and escalations as appropriate.
- **Construction Schedule Assessment:** The project schedule should be reasonable. The WIFIA program will assess the adequacy of the duration of the project as compared to the design scope and project plan. In addition, the WIFIA program will review the schedule to ensure that adequate time has been allotted for environmental permits and crosscutter compliance.
- **Federal Requirement Compliance:** The project should comply with applicable federal requirements, including NEPA. The WIFIA program will review application materials and work with applicants to make NEPA determinations, conduct consultations with other agencies, and otherwise ensure compliance. Please refer to Appendix H for an overview of EPA's steps to assessing the appropriate level of NEPA review.
- **Operation and Maintenance Plan Review:** Per statute, the applicant must have an operation and maintenance plan that reasonably accounts for the expected cost of operating and maintaining the project over a time period equal or greater than the length of the proposed credit assistance. The WIFIA program will assess the applicant's plan and estimated useful life of the project against industry standards for adequacy.
- **Procurement Documents:** Procurement documents should have a complete statement of work to be performed and a clear explanation of the basis and method for awarding the contract. In addition, the WIFIA program will review these documents to ensure that federal requirements, such as Davis-Bacon and AIS/BABA are appropriately incorporated.
- **System Condition Assessment:** When the WIFIA debt represents a material portion of the overall debt load on the system and/or substantially influences the prospective borrower's overall credit profile, the WIFIA program will ensure that the prospective borrower has adequately planned for addressing system improvement needs during the repayment period.

## 7.4 NEGOTIATION

Negotiation is an iterative process between the applicant and the WIFIA program. The WIFIA transaction team will propose terms and conditions for the loan considering requests in the application, its evaluation of potential risks through the life of the loan, and WIFIA program requirements, like certain reporting requirements and the delivery of credit ratings. The applicant should consider its ability to accept the WIFIA program's proposed terms and may respond with a counterproposal explaining what are preferred or needed changes to the terms. The WIFIA program will work with the applicant to develop highly customized terms for your organization's needs. However, extensive negotiation could slow the process and result in a later closing date and a higher credit processing fee.

## TERM SHEET DEVELOPMENT

The term sheet is an agreement between EPA and the applicant that sets forth certain business terms and conditions of WIFIA credit assistance for the project, including statutory requirements. Upon reviewing the creditworthiness of the application and completing engineering due diligence, the WIFIA program may propose terms and conditions to the applicant. The applicant and the WIFIA program will negotiate these terms and conditions until a mutually agreeable preliminary term sheet has been developed. A term sheet template can be found at <https://www.epa.gov/wifia>.

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The term sheet will include terms required for WIFIA credit assistance, which are described in the statute<sup>37</sup> and Section 3 of this document. The term sheet will also include additional basic terms and conditions related to EPA's provision of credit assistance that can materially influence the creditworthiness of the project. Generally, the term sheet will include terms such as:

- Parties to the agreement (e.g., the lender and the borrower)
- Type of credit instrument (i.e., secured loan)
- Description of the project
- Estimated total project costs and total WIFIA-eligible project costs
- Maximum amount of WIFIA credit assistance
- Method for establishing the interest rate
- Estimated final maturity date
- Source of repayment and security, including lien structure and WIFIA credit instrument priority
- Requirements to reimburse the WIFIA program for credit processing fees
- Conditions for execution of a loan agreement and disbursement
- Auditing requirements
- Covenants such as limitations on additional bonds, minimum coverage ratios, and any required

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<sup>37</sup> [33 U.S.C. § 3908](#)

reserve funds

- Projected disbursement and repayment schedule

## LOAN AGREEMENT DEVELOPMENT

The loan agreement is the authoritative agreement between EPA and the borrower. It specifies all terms and conditions of the credit assistance and authorizes the disbursement of WIFIA credit assistance to the project.

After the term sheet is drafted and sent to the borrower for comments, the WIFIA program will begin drafting a loan agreement. The WIFIA program and the applicant will negotiate the specific language of the loan agreement to accurately represent WIFIA program requirements. The WIFIA program will seek to structure the final loan agreement in a way that conforms in all material respects to the terms of the term sheet. To the extent that deviations are required, the WIFIA program may need to modify the term sheet, re-evaluate the project's creditworthiness, and assess the availability of additional budget authority if required. The timeframe for developing the loan agreement is dependent on the complexity of the agreement and progress of the negotiations.

In some cases, EPA and the borrower may enter into a Master Agreement. A Master Agreement is an umbrella contract between EPA and a borrower, providing an up-front commitment (or reservation) of loan proceeds and a common set of legal and financial terms under which a borrower can close multiple WIFIA loans over time. The borrower may request, or the WIFIA program may offer, a Master Agreement when the phasing, cost, scope, schedule, and location of some projects may change as the project develops, or when the borrower wishes to finance multiple projects over time that do not share a common purpose.

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The loan agreement will include both standard provisions and transaction-specific provisions. Depending upon the nature of the transaction, additional documents, such as an inter-creditor agreement, may also be necessary.

In addition to the contents of the term sheet, loan agreements will generally include the following:

- Security features and additional terms
- Detailed description of pledged security
- Flow of funds
- Repayment terms, including amortization schedule and final maturity
- Representations and warranties
- Borrower covenants (e.g., rate covenants)
- Annual disbursement schedule and conditions for draws
- Financial plan requirements
- Monitoring and reporting requirements

The loan agreement will also include the form of requisition for disbursements and the form of the note. Each WIFIA applicant must execute a note evidencing the requirement to repay the loan.

## 7.5 APPROVAL

### WIFIA CREDIT COUNCIL

Following the evaluation step, the WIFIA program will summarize its assessment of the application and provide a recommendation for approval in a report and presentation for the Credit Council's consideration. The Credit Council's role is to advise the Program Director regarding the creditworthiness of the applicant and whether it provides adequate assurance of timely repayment. It will make a recommendation to approve or deny an application for WIFIA credit assistance based on the applicant's creditworthiness and the project's conformance to the WIFIA program's federal objectives, risk appetite, and mission.

### EPA AGENCY REVIEW

EPA's Office of Water senior management must review and recommend the loan for the Administrator's approval. EPA's Office of General Counsel must concur with the term sheet and loan agreement prior to closing.

### OMB

The WIFIA program will calculate the range of credit subsidy cost of the WIFIA credit assistance based on the results of the creditworthiness evaluation and the terms and conditions agreed upon by the applicant and the WIFIA program. This subsidy calculation will determine the amount of budget authority that is necessary to obligate for the project. OMB reviews and approves the subsidy amount.

### EPA ADMINISTRATOR

Once the Credit Council, OMB, and EPA's Office of General Counsel recommends approval of the loan, the Assistant Administrator for the Office of Water will provide a recommendation to the Administrator, who retains the final authority for approval of WIFIA credit assistance. The Administrator approves a project by signing the term sheet and the credit agreement.

### APPLICANT

Concurrent to the EPA approval process, the applicant will complete its approval process.

## 7.6 CLOSING

For the WIFIA program to execute the loan agreement and disburse funds, the applicant must satisfy at a minimum any conditions precedent to closing, including but not limited to:

- The project's receipt of its Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion under NEPA. Compliance with other federal laws, regulations, and applicable planning requirements.
- Final ratings as described in Section 7.2.

- Applicable financing documents.

The WIFIA program will schedule the closing once all of the closing documentation has been finalized and it confirms that all conditions precedent have been met. At closing, the Administrator or his designee, and the applicant will execute the loan agreement, which is the binding legal document that allows the applicant to receive WIFIA funds. Upon execution of the loan agreement, the applicant, now a borrower, is subject to the credit processing fee, described in Section 7.2. The borrower receives an invoice for the credit processing fee after closing. The WIFIA program will make a public announcement, including posting a project factsheet and updating the information in the [WIFIA Closed Loans](#) table on the WIFIA program’s website, soon after closing.

## 7.7 REVIEW TIMELINE

After an entity is invited to apply, it has one year to apply. However, most selected projects should be able to apply in significantly less than a year. The WIFIA origination team will regularly communicate with applicants during the pre-application period. When the application, preliminary rating letter, and required fee are received, the WIFIA program begins the application evaluation process. Application evaluation is a cooperative process that involves back-and-forth discussion between the WIFIA program and the applicant. Depending on the project’s complexity and financing structure, application evaluation will take approximately 1-3 months.

Following this evaluation, the WIFIA program and the applicant will negotiate the terms and conditions for the loan resulting in a mutually acceptable term sheet and loan agreement. This process may be quick or may be extensive. The WIFIA program can provide customized loan terms and work with applicants to develop innovative credit structures to help get projects off the ground. Each transaction’s review will be tailored to reflect the complexity and risk of the project’s credit. Table 7-1 lists examples of factors that would impact an applicant’s loan closing timeframe.

*Table 7-1: Examples of WIFIA Loan Closing Timeframe Factors*

Faster Loan Closing	Longer Loan Closing
Projects for WIFIA loan are established and at 30-90% design	Projects not yet well defined
Borrower is highly rated and familiar with issuing debt	Revenue stream is riskier and requires substantial evaluation
Environmental studies and consultations complete or currently underway	Environmental impact of construction has not yet been determined and requires further studies
Responsive borrower	Borrower requires significant third-party approvals/agreements outside of the loan process
Borrower has dedicated person(s) to spearhead the WIFIA process and make decisions	Legal terms are extensively negotiated

# SECTION 8: POST-CLOSING ACTIVITIES AND PROJECT MONITORING

## SECTION 8: POST-CLOSING ACTIVITIES AND PROJECT MONITORING

Following closing, borrowers must meet several requirements to receive funding and remain in compliance with the loan agreement. This section describes the post-closing activities involving WIFIA borrowers in three categories: disbursements, loan servicing, and loan monitoring. The executed loan agreement will identify specific requirements pertaining to each credit instrument.

*Figure 8-1: WIFIA Program Loan Process Phase 3: Project Monitoring*



### 8.1 DISBURSEMENTS

Prior to any disbursement, all conditions precedent to funding must be satisfied. The borrower may begin submitting eligible project costs for reimbursement following closing. To receive a disbursement, borrowers must submit a requisition form that will require borrowers to verify continued compliance with the loan agreement. The requisition form includes certification that the disbursements are being made against incurred eligible project costs and in accordance with the terms of the loan agreement. It may also include confirmation that there have been no changes to the project plan or any material events and that the representations and warranties included in the loan agreement are still true and correct, among other items.

Each request for disbursement must include supporting documentation to ensure that the Portfolio Management Team can evaluate the costs for program eligibility, project allocability, and reasonableness. Examples of supporting documents include signed and approved applications for payments (Note: Schedule of Items/Bid Tabulation is not necessary but may be requested at the discretion of the Portfolio Manager); approved Invoices; contractor Form G702 (Application and Certificate for Payment) or equivalent, signed by the borrower, borrower's consulting engineer (A/E) or authorized agent.

Borrowers may request WIFIA funds disbursements as frequently as once per month. The WIFIA program's goal is to have disbursement available in the borrower's account 15 calendar days after receiving a disbursement request. Disbursements will be on the 1<sup>st</sup> or 15<sup>th</sup> of the month as specified in each loan agreement.

## 8.2 LOAN SERVICING

The WIFIA program charges borrowers an annual fee for loan servicing activities associated with each WIFIA credit instrument, such as credit accounting, collections, maintenance of documents, and financial reporting. EPA will also collect a set-up fee equal to the annual servicing fee at loan closing to cover the cost of establishing the borrower's account. In the period prior to substantial completion of the project the annual servicing fee will range from \$10,000 for loans under \$100 million to \$25,000 for loans greater than \$400 million. After substantial completion the annual servicing fee will be \$7,500 for all borrowers. For State infrastructure financing authority borrowers, the annual service fee will be approximately \$8,000-\$12,000. Loan servicing fees are updated periodically based on inflation. The WIFIA program may charge an enhanced monitoring fee for loans that have higher credit risk and/or require enhanced monitoring. The WIFIA program may retain outside assistance to perform loan servicing for WIFIA loans.

In the event that a borrower experiences difficulty relating to technical, financial, or legal matters or other events (e.g., engineering failure or financial workouts) which require the WIFIA program to incur time or expenses beyond standard monitoring, EPA will be entitled to payment in full from the borrower of an Extraordinary Expenses Fee in an amount determined by the WIFIA program and of related fees and expenses of its independent consultants and outside counsel, to the extent that such fees and expenses are incurred directly by the WIFIA program and to the extent such third parties are not paid directly by the borrower.

## 8.3 LOAN MONITORING

EPA is required to operate the WIFIA program under a robust management and oversight structure and to monitor it in terms of programmatic goals and performance within acceptable risk thresholds. To accomplish these goals, the WIFIA program performs loan monitoring functions using a variety of tools at its disposal. The following subsections describe the purpose of these functions, as well as the way the WIFIA program plans to implement these requirements.

### LOAN MONITORING FUNCTIONS

The WIFIA program monitors the credit instruments in its portfolio using three key functions: credit risk monitoring, compliance management and monitoring, and program evaluation. These functions assess different borrower or program characteristics and are each an essential part of the WIFIA program's loan monitoring activities.

**Credit Risk Monitoring:** The WIFIA program monitors the credit risk of each loan within its portfolio, which enables it to quickly detect financial deterioration and changes in the credit risk of WIFIA program borrowers. By quickly detecting deterioration in a borrower's risk profile, the WIFIA program may make informed decisions to address weaknesses and strengthen its position or take preventative measures to minimize the risk posed to the WIFIA program. Annually, the WIFIA program must update each credit instrument's credit risk assessment and recalculate its federal credit subsidy costs.

**Compliance Management and Monitoring:** The WIFIA program ensures its integrity through compliance management and monitoring. Compliance management and monitoring is the process through which the WIFIA program verifies that borrowers are abiding by the terms of the loan agreement and prevailing laws and regulations. The WIFIA program will verify that borrowers are implementing projects



in a manner that is consistent with the objectives stated in their applications and supports the WIFIA program's mission.

Borrowers are required to remain in compliance with federal requirements such as the domestic preference requirements (AIS/BABA), the Davis-Bacon wage requirement, environmental statutes (e.g., NEPA), and other requirements as set forth in the credit agreement. The Portfolio Management team is responsible for coordinating periodic site visits and performing documentation audits to verify that projects receiving WIFIA funding comply with AIS/BABA and Davis-Bacon provisions. To the extent possible these site visits occur at the same time as construction inspections. Typical compliance requirements verification that the WIFIA program will undertake include:

- BABA & AIS: Inspect certification records and spot-check installed products for compliance.
- Davis-Bacon: Collect certifications of compliance forms, ensure that the borrower has collected weekly payroll reports, examine payroll reports to ensure consistency with project size and progress, ensure that laborers and mechanics are being paid weekly, ensure that job types seem consistent with project type and phase of construction, ensure that the borrower has collected statements of compliance for all weeks of construction, review completed interview forms, ensure that apprentices and trainees are verified to be registered in acceptable programs, ensure that wage determinations and Davis-Bacon posters are posted in an appropriate location.
- NEPA: Verify the implementation of environmental mitigation measures.

As part of compliance management, the WIFIA program reviews and approves project-related documents, as appropriate. Such documents may include, but are not limited to, new or revised construction plans and specifications, start-up and performance testing plans, and operations and maintenance plans.

**Program Evaluation:** Program evaluation uses measurement and analysis to answer specific questions about how well a program is achieving its outcomes and why. Program evaluation will provide a method for determining the benefits and impacts of WIFIA projects, including economic, environmental, and public health benefits. The WIFIA program must perform periodic program evaluations to assess whether the WIFIA program is achieving policy goals while mitigating risk and costs to the taxpayer. As such, the WIFIA program collects data from borrowers that will enable the assessment of the program's outputs (e.g., loans issued, disbursements), outcomes (e.g., interest payments savings, private sources leveraged, accelerated projects), and impacts (e.g., pounds of pollution prevented, additional safe drinking water generated).

## LOAN MONITORING TOOLS

**Periodic Reporting:** The WIFIA program requires that borrowers submit financial condition reports to:

- Provide an oversight tool for ensuring each borrower's compliance with the provisions of the credit agreement,
- Monitor the overall status of the project and the WIFIA program, and
- Assist it in identifying any changes to the credit risk posed to the federal government under individual credit agreements.

WIFIA credit agreements will specify scheduled (e.g., annual, monthly, quarterly, or project milestone) reporting requirements, as well as any other periodic reporting requirements. These reporting requirements are included in the loan agreement and are tailored to the characteristics and risks of the project and the borrower. Examples are presented in Table 8-1.

**TABLE 8-1: OVERSIGHT AND MONITORING DOCUMENTATION**

Example of Loan Monitoring Documentation*
<p><b>Annual Financial Planning and Report</b></p> <ul style="list-style-type: none"> <li>• Updates to the project or system financing plans</li> <li>• Updated financial model or pro-forma</li> <li>• Audited financial statements</li> <li>• Rating opinion letter (as available)</li> </ul>
<ul style="list-style-type: none"> <li>• Project Oversight and Monitoring (typically quarterly)</li> <li>• Updates on project development, design and construction</li> <li>• Amount of total project costs expended and estimated to be required to complete the project</li> <li>• Assessment of the overall construction progress</li> <li>• Changes to the substantial completion date</li> <li>• Updates to the project schedule</li> </ul>
<p><b>Timely Updates on Material Events</b></p>

*\*Specific reporting requirements will be negotiated with the WIFIA program and stated explicitly in the loan agreement.*

As part of its oversight and monitoring of WIFIA projects, the WIFIA program will routinely update its information on credit quality, construction schedules, legal issues, revenue forecasts, financial projections, and project performance. Accordingly, borrowers will be required by covenant in the WIFIA loan agreement to provide ongoing financial and project information not only during construction, but so long as the WIFIA credit instrument is outstanding and/or until the debt obligation to the federal government is fully repaid. In each loan agreement, EPA will specify the required ongoing documentation and the frequency of such information requests.

The WIFIA program’s oversight and monitoring may include periodic status meetings with the borrower, reviews by the independent engineer (if applicable) and/or other relevant reports, and site visits (described below). Additionally, all borrowers must notify the WIFIA program of material events that could affect project development or the credit quality of the project.

**Construction Monitoring Site Visits:** The WIFIA program will conduct site visits following the execution of the credit agreement. These site visits will primarily monitor construction progress made by WIFIA borrowers and will also serve to verify compliance with overall federal requirements and loan-specific requirements in the loan agreement.

Any risks or issues identified during site visits will be documented and used to update the EPA’s ongoing risk assessment of the borrower. Projects will undergo three types of visits:

- Initial visit: The timing of this visit will depend on the stage of the project being financed. For projects that have not had a construction kick-off meeting then EPA will plan to attend the kick-off meeting. For projects that are already underway then EPA will schedule the initial visit soon after loan closing.
- Periodic construction monitoring: Every project will be visited at least on an annual basis during

construction but if the WIFIA program identifies problems or high risks with the schedule, scope, budget, or compliance then more frequent visits will be scheduled.

- Substantial completion: EPA will conduct a last site visit at substantial completion.

**Heightened Monitoring:** As necessary, the WIFIA program will be authorized by the credit agreement to commence increased monitoring and reporting to ensure the continued credit quality of the project and minimize the federal government's risk. The purpose of such heightened monitoring activities will be to address problems quickly and efficiently and return the project to expected performance. Borrowers subject to such heightened monitoring requirements may be subject to additional reporting requirements, and/or expenses for consultants and fees as documented in the credit agreement.

## 8.4 SINGLE AUDIT AND CFDA

According to the OMB Circular A-133 and Uniform Guidance, 2 CFR 200.501(a), non-Federal entities that expend \$750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of these parts. Single audits are not collected by the WIFIA program, but borrowers are responsible to submit single audits to the Federal Audit Clearinghouse. The WIFIA Program's Catalog of Federal Domestic Assistance (CFDA) number is 66.958 (required for submission).

# SECTION 9: SWIFIA CREDIT POLICIES

## SECTION 9: SWIFIA CREDIT POLICIES

In addition to the terms and conditions and credit policies outlined in Sections 3 and 4, the SWIFIA program has additional credit policies. This allows EPA to offer a streamlined approach for State infrastructure financing authorities to access loans. SWIFIA loans must be senior loans, on parity with a SWIFIA borrower's other senior capital market debt of the same credit quality, for the perpetuity of the SWIFIA loan.

The SWIFIA program offers two loan structure options:

1. EPA adopts the State infrastructure financing authority's existing capital market debt indenture (to the extent the terms are permissible under Federal law and regulation and WIFIA program policies); or
2. The State infrastructure financing authority accepts EPA's standard terms.

State infrastructure finance authority borrowers seeking customized terms must apply to the Base program as described in Section 2.1.

### 9.1 SWIFIA INDENTURE REQUIREMENTS

The following topics should be addressed in the borrower's debt instrument (e.g., indenture):

- Flow of funds
- Distribution or use of excess cash flows
- Maintenance of debt service accounts
- Voting for material amendments to debt instrument
- Mergers and acquisitions of the borrower
- Cures and/or remedies for borrower's failure to satisfy coverage covenant
- Adequate enforcement mechanics (EPA cannot be required to indemnify any party)

### 9.2 SWIFIA STANDARD TERMS

EPA offers the following standard terms to State infrastructure financing authority borrowers without existing bond indentures or that select the standard terms loan structure in their applications.

Additionally, a template term sheet is available on the WIFIA website at

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

#### DEDICATED SOURCE OF DEBT SERVICE PAYMENT

The borrower's existing and future loan principal and interest (P & I) repayments must be pledged for the payment of debt service. At least 90 percent of existing and future loan portfolio is pledged for the payment of all debt service.

The structure will vary depending on whether all the borrower's bond series are secured by the same pool versus secured on a series-by-series level. For example:

1. If all the SWIFIA borrower's bond series are secured by a large pool of pledged loans in parity,

the SWIFIA bond security will also be the P&I repayments from that “large pool” of pledged loans.

2. If SWIFIA borrower’s bonds are issued as stand-alone series and secured by certain underlying pledged loans, the SWIFIA bond “primary” security will be the P&I repayments from the underlying pledged loans that SWIFIA supports. This primary security will be exclusive to SWIFIA. The “secondary” security will be the excess P&I repayments from all the other loans in the State infrastructure financing authority’s portfolio, after payment of Debt Service on other bond series, if any.

### **DEBT SERVICE COVERAGE RATIO AND ADDITIONAL BONDS TEST**

The minimum debt service coverage ratio and additional bonds test is 1.0. The SWIFIA borrower must demonstrate that it meets this requirement by providing a projected revenue certificate (PRC) showing annual debt service coverage over the life of all outstanding debt.

### **DEBT SERVICE RESERVE**

A debt service reserve is not required unless is it offered to other lenders.

### **SWIFIA DEBT SERVICE PAYMENT DATES**

Debt service payments must be either annual or semi-annual.

### **USE OF TRUSTEE/PAYING AGENT FOR SWIFIA DEBT SERVICE**

Use of a trustee or paying agent for SWIFIA debt service is optional.

### **SWIFIA REPORTING REQUIREMENTS**

The SWIFIA borrower will be required to report the following:

- Annual audited financial statements;
- Reporting to EMMA or EMMA-like event filings;
- Updated Projected Revenue Certificate (PRC) when additional debt issued or pledged SRF loan are substituted (unless posted to EMMA)
- SRF annual report;
- Borrower substitution of SWIFIA funded project (also see section 9.3); and
- Annual SWIFIA Loan report showing project construction status (%) and any outstanding federal non-compliance (e.g., American Iron and Steel, Davis-Bacon) issues.

### **LOAN PREPAYMENT**

When SRF loans included in the SWIFIA project are pre-paid and the pre-payment does not adversely impact the overall P&I cash flow for debt service coverage, these excess funds may be used by the SWIFIA borrower for new loans rather than prepayment of SWIFIA loan.

## **9.3 RIGHT TO REPLACE**

Regardless of its loan structure, if the SWIFA borrower elects to replace an eligible SRF loan included in

the SWIFIA project with a different SRF loan, the replacement loan must:

- Comply with all applicable federal laws, regulations, and guidance;
- Have received a final Environmental Determination under NEPA or, in cases where the borrower conforms with the WIFIA PEA, the replacement SRF loan must also conform to the PEA; and
- Not reasonably be expected to result in a Material Adverse Effect as defined in the credit agreement.

# SECTION 10: SWIFIA PROJECT SELECTION

## SECTION 10: SWIFIA PROJECT SELECTION

This section describes the first phase of the SWIFIA program application process, which includes the release of the NOFA, the submission of LOI, the evaluation of LOI, and the determination of whether to invite a project to apply.

*Figure 10-1: SWIFIA Program Loan Process Phase 1: Project Selection*



### 10.1 NOTICE OF FUNDING AVAILABILITY (NOFA)

The initial phase commences with the issuance of a NOFA. EPA will publish the NOFA in the [Federal Register](#) and on the [WIFIA program website](#). Each NOFA will specify the amount of funding available to support SWIFIA credit assistance and instructions for submitting a LOI. EPA may also include in the NOFA additional eligibility requirements, set-asides, or priorities as mandated by the appropriating legislation.

Like a bank, the WIFIA program has funding available on an ongoing basis. This allows prospective borrowers to request financing on their schedule. A rolling selection process allows EPA to provide year-round access to WIFIA funding and quicker selection decisions to prospective borrowers.

### 10.2 LETTER OF INTEREST SUBMISSION

State infrastructure financing authority prospective borrowers must submit a LOI pursuant to the instructions articulated in the NOFA to be considered for WIFIA credit assistance in a selection round.

In the LOI, prospective borrowers provide the WIFIA program with enough information to:

- Validate the eligibility of the prospective borrower and the proposed project; and
- Supply the WIFIA program with information to evaluate the project against the selection criteria defined in the NOFA.

#### COMPONENTS

The LOI contains the following four (4) sections:

**Loan Information:** In this section, the prospective borrower provides its legal name, address, website, Unique Entity ID from SAM.gov, and employer/taxpayer identification number. It also indicates its requested SWIFIA loan amount, the estimated total costs of the SWIFIA project, whether the projects

are Clean Water SRF and/or Drinking Water SRF projects, and its requested loan structure.

**Supporting Documents:** The prospective borrower provides the most recent version of its Intended Use Plan (IUP), SRF Operating Agreements, documentation of the priority setting system, and the bond indenture (if applicable).

**Contact Information:** In this section, the prospective borrower identifies the point of contact with whom the WIFIA program should communicate regarding the LOI. To complete the EPA's evaluation, the WIFIA program staff may contact a prospective borrower regarding specific information in the LOI.

**Certifications:** In this section, the prospective borrower certifies that it will abide by all applicable laws and regulations, including NEPA, the Federal Water Pollution Control Act, the Build America, Buy America Act requirements, the American Iron and Steel requirements, and federal labor standards, among others, if selected to receive financing.

Prospective borrowers should use the LOI form provided on the [WIFIA website](#) to complete their letters of interest. In cases where there are differences between the guidance in this document and the guidance on the electronic form, the latter should dictate the prospective borrower's response.

In order for a LOI to be deemed complete and considered for selection, prospective borrowers must submit the LOI and all supporting documents to EPA in accordance with the instructions stated in the [NOFA](#).

To submit the documents:

1. Upload the documents to EPA's SharePoint site. To be granted access to the SharePoint site, prospective borrowers must request access to SharePoint by emailing [wifia@epa.gov](mailto:wifia@epa.gov); and
2. Email [wifia@epa.gov](mailto:wifia@epa.gov) confirming that the complete LOI package has been uploaded to the SharePoint site.

After completing its intake process, EPA will provide a confirmation email. In addition, the program will post a list of the letters of interest it receives, with all prospective borrowers and a short project description.

### 10.3 LETTER OF INTEREST EVALUATION

The WIFIA program will invite SWIFIA prospective borrowers to apply based on submitted letters of interest that satisfy the eligibility requirements as described in the NOFA. EPA will only select projects which are reasonably anticipated to be able to meet the eligibility requirements and only offers a loan amount for which the WIFIA program has enough budget authority.

EPA will assess letters of interest by performing an eligibility screening and an evaluation of the selection criteria.

#### ELIGIBILITY SCREENING

Upon receipt of a LOI, the WIFIA program validates that the prospective borrower is an eligible entity as described in Section 2.1, the proposed SWIFIA project is an eligible project as described in Section 2.2, and the borrower is creditworthy.



## OMB BUDGETARY SCORING DETERMINATION

Projects seeking WIFIA loans will be assessed by OMB to determine compliance with budgetary scoring rules, a process that will be conducted in parallel to EPA's LOI evaluation. The WIFIA program will provide OMB a response to two initial screening questions and sixteen scoring factors to assist OMB to make this determination. The questions may be found in Federal Register publication: Water Infrastructure Finance and Innovation Act Program (WIFIA) Criteria Pursuant to Public Law 116-94 85 FR 39189, June 30, 2020<sup>38</sup>. If the prospective borrower has additional documentation that would help the WIFIA program answer the questions and OMB make this determination, the prospective borrower may submit it as an attachment to the LOI. The WIFIA program may contact prospective borrowers after the LOI is submitted if clarification is needed to answer the budgetary scoring determination questions. EPA may not invite a borrower and project to apply until OMB provides a determination that the project complies with budgetary scoring rules.

## SELECTION CRITERIA

As required by statute, the WIFIA program evaluates SWIFIA projects using the following ten (10) selection criteria:

1. The extent to which the project (1) protects against extreme weather events, such as floods or hurricanes; or (2) helps maintain or protect the environment: 33 U.S.C. § 3907(b)(2)(F)
2. The extent to which the project serves regions with significant energy exploration, development, or production areas: 33 U.S.C. § 3907(b)(2)(G)
3. 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. 33 U.S.C. § 3907(b)(2)(H)
4. The extent to which the project addresses identified municipal, State, or regional priorities. 33 U.S.C. § 3907(b)(2)(I).
5. 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]. 33 U.S.C. § 3907(b)(2)(J).
6. The extent to which the project uses new or innovative approaches. 33 U.S.C. § 3907(b)(2)(D).
7. 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. 33 U.S.C. § 3907(b)(2)(C).
8. The extent to which the project financing plan includes public or private financing in addition to assistance under [WIFIA]. 33 U.S.C. § 3907(b)(2)(B).
9. The extent to which assistance under [WIFIA] reduces the contribution of Federal assistance to

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<sup>38</sup> <https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13889.pdf>

the project. 33 U.S.C. § 3907(b)(2)(K).

10. The amount of budget authority required to fund the Federal credit instrument made available under [WIFIA]. 33 U.S.C. § 3907(b)(2)(E).

## INDENTURE REVIEW

If the prospective borrower requests that EPA adopt its existing indenture, the WIFIA program will review the submitted indenture. The review will focus on identifying any elements that would preclude the WIFIA program from accepting the indenture. The review will focus on the:

- Flow of funds and use of excess cash flow
- Additional bonds test
- Coverage requirement
- Security establishment for senior debt protection
- Defaults and remedies

## 10.4 PROJECT SELECTION

All eligible SWIFIA prospective borrowers will be invited to apply for a SWIFIA loan in the amount requested in the LOI so long as the WIFIA program has enough funding.

## 10.5 REVIEW TIMELINE

The project selection process, from submission of a complete LOI package through inviting the SWIFIA prospective borrower to submit an application, takes approximately eight (8) weeks. This process is the same for all SWIFIA prospective borrowers. EPA examines and reviews letters of interest beginning immediately after confirmation that a complete LOI package has been submitted. Evaluating of the project and LOI package takes another approximately eight (8) weeks after which an invitation to apply (or notice of rejection) is sent to the prospective SWIFIA borrower.

# SECTION 11: SWIFIA PROJECT APPROVAL

## SECTION 11: SWIFIA PROJECT APPROVAL

This section describes the process by which EPA approves projects for SWIFIA credit assistance. This is the second phase of the loan process. It includes a description of the steps that SWIFIA prospective borrowers follow to submit an application for SWIFIA credit assistance. It also describes the program's detailed evaluation review, documentation, and approval process, which culminates in the execution of a credit agreement by the Administrator.

*Figure 11-1: SWIFIA Program Loan Process Phase 2: Project Approval*



### 11.1 PRE-APPLICATION

After the WIFIA programs notifies the prospective borrower that they are invited to apply, the borrower will begin working with an origination team member who is the primary point of contact and will lead the WIFIA program's overall efforts. The origination team member schedules an introductory call and regular check-in calls to discuss the project, explain the SWIFIA application process, and answer questions. The prospective borrower will also provide the origination team member with a timeframe for when it plans to submit the application.

### 11.2 APPLICATION SUBMISSION

The second phase of the application process begins when a SWIFIA prospective borrower who has been invited to apply for SWIFIA assistance submits its complete application, including a preliminary rating opinion letter and the application fee. EPA anticipates that prospective borrowers will need less than one year from their invitation date to complete applications. In the application, a prospective borrower provides additional supporting information and provides EPA with the materials necessary to complete its evaluation. EPA will only review applications submitted in response to an invitation to apply.

Applicants may wish to assert a business confidentiality claim covering part or all the information included in the application or referenced source material. Further information, including a definition of "confidential business information (CBI)," the process for asserting confidentiality, and the information EPA will require from an applicant to substantiate the claim, can be found in Appendix F. Please be aware that EPA reserves the right to request substantiation at any time following a business confidentiality claim. Applicants should submit completed applications that include all components on

the application checklist. The completed application package should be uploaded to WIFIA's SharePoint site. To be granted access to the WIFIA SharePoint site, the applicant may email the WIFIA Underwriter assigned to the applicant with the names and emails of all staff that need access.

## COMPONENTS

The following list outlines the elements of an application. However, it is not an exhaustive list of the items that may be required of the applicant. Additional items may be requested on a case-by-case basis. The application contains the following components:

- 1. Key Applicant and Loan Information:** The applicant provides basic information such as its legal name, project name, requested loan amount, estimated total costs of the SRF loans that are included in the SWIFIA Project, anticipated closing date, and contact information. In addition, it provides its Unique Entity ID from SAM.gov, and employer/taxpayer identification number. The applicant also provides information about the quantitative and qualitative benefits of the SWIFIA project, such as environmental, public health and economic benefits and cost savings. The applicant explains its legal structure, legal authority to apply for a loan, approval process. Additionally, it also discloses any current, threatened, or pending litigation.
- 2. Financing Plan:** The applicant indicates its requested loan structure. Two options are available for SWIFIA borrowers. Option 1 is that EPA adopts SRF program's existing capital market debt indenture (to the extent the terms are permissible under Federal law and regulation and WIFIA program policies). Option 2 is that SRF program accepts EPA's standard terms. The option marked must be consistent with the option requested in the LOI. (Note: The form offers a third option, negotiated terms, which is only available to State infrastructure financing authorities applying under the WIFIA base program.) Based on the requested loan structure, the applicant answers the appropriate questions. The applicant provides information about its existing indenture (if applicable), existing debt, and additional bonds tests or other controls in place to mitigate risk. The applicant completes the provided sources and uses table. Additionally, it indicates its proposed terms (e.g., origination and final maturity dates, amortization and repayment schedules) and default tolerance for the loan. The applicant also describes its overall SRF loan portfolio size and outstanding loan debt concentration.
- 3. Supporting Documents:** The applicant submits all documents referenced in the application to support its submission.
- 4. Certifications:** The applicant certifies that it will abide by all applicable laws and regulations, including NEPA and the Davis-Bacon wage rules, as described in Section 2.7 and in Appendix E.

## PRELIMINARY RATING

As a measure of a project's creditworthiness, WIFIA requires each applicant to provide, at the time of application, a preliminary rating opinion from at least one NRSRO indicating that the senior obligations of the project (which may be the federal credit instrument) have the potential to achieve an investment-grade rating.<sup>39</sup> The WIFIA program will not consider an application complete until an applicant has provided a preliminary rating opinion letter, or preferably, a detailed rating article from an NRSRO website. For the preliminary rating, WIFIA accepts an existing rating on bonds that are on parity with the

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<sup>39</sup> [33 U.S.C. § 3907\(a\)\(1\)\(D\)\(i\)](#)

proposed WIFIA loan.

The preliminary rating opinion letter is a credit assessment from an NRSRO that provides a preliminary indication of the project's overall creditworthiness and specifically addresses the potential of the project's senior debt obligations to achieve an investment-grade rating and the default risk of the WIFIA loan. Since the indicative rating is performed at an early stage of application, the credit analysis is not expected to include comprehensive information about the loan structure. Instead, the indicative rating should provide an opinion about the potential to reach a credit rating based on a set of assumptions. The indicative rating may be based on the best information available, and assumptions provided by the applicant that may change during negotiation.

## FINAL RATING

The statute requires that prior to execution of the loan agreement, each applicant provide the WIFIA program with a final rating opinion from a NRSRO indicating that the senior obligations of the project have an investment-grade rating.<sup>40</sup> The WIFIA implementation rule at 40 C.F.R. § 35.10040(b) further clarifies that the rating should provide commentary on the default risk of the WIFIA loan. Since the final rating is issued after terms and conditions are established and when final documents are drafted, the rating should reflect the specific credit terms of the transaction.

The final rating should preferably be a public rating. The credit assessment should specifically evaluate the WIFIA loan's default risk and should contemplate the full life of the WIFIA credit instrument. In limited circumstances, the final rating requirement may be satisfied by an existing rating on bonds that are on parity with the proposed WIFIA loan. Questions about the rating requirements should be directed to the WIFIA transaction team.

Applicants should contact the WIFIA program with any questions regarding the rating process and the requirements for preliminary and final investment-grade credit rating opinions on the senior obligations and the WIFIA loan. The NRSROs will be able to answer questions concerning fees, timing of assessments, information requirements, and surveillance practices associated with obtaining preliminary opinion letters, credit ratings, periodic rating updates, and credit surveillance reports.

## USE OF EXISTING RATING

The WIFIA program values recently issued public credit assessments on the revenue being pledged to repay the WIFIA loan. To streamline the credit review process, the WIFIA program may accept an existing rating in place of a new, indicative rating on a case-by-case basis. In evaluating whether a previous rating letter for transactions with existing indentures can be accepted in lieu of the new preliminary rating, the WIFIA program will assess whether the following criteria are met:

- The existing credit rating is less than a year old or is actively maintained or monitored;
- The SWIFIA additional debt does not materially change the credit quality of the revenue pledge;
- The existing credit rating opines on the senior lien proposed for the SWIFIA loan; and
- The existing credit rating is longstanding and high investment grade.

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<sup>40</sup> [33 U.S.C. § 3907\(a\)\(1\)\(D\)\(ii\)](#)

## FEES<sup>41</sup>

The WIFIA program requires each applicant to reimburse the federal government for the costs of providing credit assistance and retaining expert firms, including legal, engineering, and financial advisory services needed to review its application materials, negotiate, and close the loan agreement. These fees can be financed by the WIFIA loan as eligible project costs.

The WIFIA program will require the following fees from applicants as part of the application process. Total fees associated with the application process are estimated to be approximately \$150,000–\$250,000 per application. These fees will be updated in the Federal Register, as appropriate.

- **Application Fee:** For State infrastructure financing authority borrowers, the application fee is \$100,000. The application fee is payable upon submission of the application, without which the application will not be evaluated. The application fee is non-refundable and is credited to the credit processing fee.
- **Credit Processing Fee:** The credit processing fee is payable upon the execution of the loan agreement. It reimburses EPA for costs more than the application fee incurred by EPA to provide credit assistance, including retaining legal, financial, and other expert contractor services. Due to the nature of this fee, the amount is expected to vary between applicants. However, the WIFIA program estimates these costs at between \$150,000–\$250,000 per applicant, a portion of which may be waived at the discretion of the WIFIA program. If an application is rejected or withdrawn, the applicant is still required to reimburse costs incurred to EPA.

In addition to the fees required as part of the application process, the WIFIA program may charge the following fees when deemed necessary:

- **Loan Servicing Fee:** The WIFIA program charges borrowers an annual fee for loan servicing activities associated with each WIFIA credit instrument, such as credit accounting, collections, maintenance of documents, and financial reporting. Loan servicing fees are updated periodically based on inflation. The WIFIA program may retain outside assistance to perform loan servicing for WIFIA loans.
- **Extraordinary Expenses Fee:** In the event that a borrower experiences difficulty relating to financial, or legal matters, or other events (e.g., financial workouts) which require the WIFIA program to incur time or expenses beyond standard monitoring, EPA will be entitled to payment in full from the borrower of additional fees in an amount determined by the WIFIA program and of related fees and expenses of its independent consultants and outside counsel, to the extent that such fees and expenses are incurred directly by the WIFIA program and to the extent such third parties are not paid directly by the borrower.
- **Optional Supplemental Fee:** Although it is unlikely that a scenario will arise under which it would assess this fee, the WIFIA program will allow an applicant to “buy down” the credit subsidy required for the credit instrument. This could allow an applicant to proceed to closing if sufficient credit subsidy is not otherwise available. This fee will only be charged upon agreement by an applicant.

The fee schedule is provided as Appendix D.

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<sup>41</sup> The fee rule can be found in the [Federal Register](#).

### 11.3 APPLICATION EVALUATION

Upon receipt of a complete application, the WIFIA program will initiate its evaluation of the request for credit assistance. The WIFIA program may retain the services of financial advisors, outside legal counsel, and other expert advisors, as needed, during the application evaluation through closing. Through the credit processing fee, the applicant will reimburse EPA for the cost of providing credit assistance, including the cost of retaining these services, that are more than the application fee.

#### APPLICATION INTAKE

The WIFIA program will first validate that the State infrastructure finance authority's application contains all the requested elements and request missing documents, as necessary. For an application to proceed to evaluation, the applicant must pay the application fee, provide the preliminary rating opinion letter from a NRSRO, and submit a signed application. The WIFIA program will confirm that the application continues to meet the eligibility requirements.

#### DETERMINATION OF CREDITWORTHINESS

By statute, every project and borrower that receives a SWIFIA loan must be creditworthy. During the creditworthiness review, the WIFIA transaction team evaluates the risk to the government to lending to the applicant with the requested loan structure and contemplates potential mitigants to bring the risks to an acceptable level. Since EPA will likely hold the loan to its maturity, the WIFIA program needs to consider risks that could emerge throughout the repayment term. To do this, the team reviews the detailed information provided, undertakes quantitative analysis using a financial model, and develops its own internal risk rating.

The WIFIA program will base the creditworthiness determination on a review of all the following:

- Terms, conditions, financial structure, and security features of the proposed financing.
- Dedicated revenue source(s) securing the financing.
- Financial assumptions surrounding the proposed borrower cash flows.
- Financial soundness and credit history and outlook of the borrower.
- The WIFIA program's determination of creditworthiness must be based on realistic and probable inputs. The determination of creditworthiness will include an assessment of each application in order to develop a clear understanding of the following:
  - The applicant, including its credit history and structure.
  - The source or sources of repayment.

The following section outlines the framework that will be used to assess each application for credit assistance.

#### CREDIT ASSESSMENT CRITERIA

In general, the WIFIA program will review creditworthiness focusing on the categories outlined below. As noted above, each applicant and program will have exposure to its own distinctive combination of risks and each application will be assessed with a focus on its specific risks. The descriptions that follow

provide examples of assessment criteria, but are not meant to be an exhaustive list:

- **Financial Risk Factors:** The WIFIA program will consider the applicant's financial strengths and risk, such as weighted average default rating, default tolerance, and credit enhancements.
- **Business Risk Factors:** The WIFIA program will assess the strength of the applicant based on factors such as, portfolio size and diversity, portfolio concentration, management experience and operating history, and financial policies, procedures, and internal controls.

These categories are overarching and provide a general framework for the creditworthiness assessment of every application which can be adjusted to fit the risk profile of each proposed project. Following the assessment of each application based on the overarching categories, and the more detailed analysis guided by the specific attributes of the proposed project, the WIFIA program will make an initial determination of creditworthiness.

## ENGINEERING DUE DILIGENCE

The WIFIA program will analyze the applicant's engineering review procedures to identify major technical risks that could impact the implementation of SRF projects.

## 11.4 DOCUMENTATION

Following its review, the WIFIA transaction team will document the loan in a term sheet and credit agreement. Since the SWIFIA loan structure is limited to either EPA adopting an existing indenture or the State infrastructure financing authority accepting EPA's standard terms, the applicant should not expect to negotiate customized terms with EPA. State infrastructure financing authority borrowers seeking a customized WIFIA loan should apply to the Base program as outlined in Sections 6 and 7.

## 11.5 APPROVAL

### WIFIA CREDIT COUNCIL

Following the evaluation step, the WIFIA program will summarize its assessment of the application and provide a recommendation for approval in a report and presentation for the Credit Council's consideration. The Credit Council's role is to advise the Program Director regarding the creditworthiness of the applicant and whether the loan provides adequate assurance of timely repayment. It will make a recommendation to approve or deny an application for WIFIA credit assistance based on the applicant's creditworthiness and the project's conformance to the WIFIA program's federal objectives, risk appetite, and mission.

### EPA AGENCY REVIEW

EPA's Office of Water senior management must review and recommend the loan for the Administrator's approval. EPA's Office of General Counsel must concur with the term sheet and loan agreement prior to closing.

### OMB

The WIFIA program will calculate the range of credit subsidy cost of the WIFIA credit assistance based on the results of the creditworthiness evaluation and the terms and conditions agreed upon by the



applicant and the WIFIA program. This subsidy calculation will determine the amount of budget authority that is necessary to obligate for the project. This calculation requires review and approval by OMB.

## EPA ADMINISTRATOR

Once the Credit Council, OMB, and EPA's Office of General Counsel recommends approval of the loan, the Assistant Administrator for the Office of Water will provide a recommendation to the Administrator, who retains the final authority for approval of WIFIA assistance. The Administrator approves a project by signing the term sheet and the credit agreement.

## APPLICANT

Concurrent to the EPA approval process, the applicant will complete its approval process.

## 11.6 CLOSING

For the WIFIA program to execute the loan agreement and disburse funds, the applicant must satisfy a minimum any conditions precedent to closing, including but not limited to:

- The project's receipt of its Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion under NEPA.
- Compliance with other federal laws, regulations, and applicable planning requirements.
- Final rating letter as described in Section 11.2.
- Applicable financing documents.

The WIFIA program will schedule the closing once all of the closing documentation has been finalized and it confirms that all conditions precedent have been met. At closing, the Administrator or his designee, and the applicant will execute the loan agreement, which is the binding legal document that allows the applicant to receive WIFIA funds. Upon execution of the loan agreement, the applicant, now a borrower, must pay the credit processing fee, described in Section 11.2. The WIFIA program will make a public announcement and post information about the loan on the WIFIA program's website soon after closing.

## 11.7 REVIEW TIMELINE

After a State infrastructure financing authority is invited to apply, it has up to one year to submit an application. However, most selected projects should be able to apply in significantly less than a year. The WIFIA transaction team will regularly communicate with applicants during the pre-application period. When the application, preliminary rating letter, and required fee are received, the WIFIA program begins the application evaluation process. Application evaluation is a cooperative process that involves back-and-forth discussion between the WIFIA program and the applicant. Depending on the project's complexity and financing structure, application evaluation will take approximately 1-3 months. Following this evaluation, the WIFIA program will document the terms and conditions for the loan resulting in a mutually acceptable term sheet and loan agreement. Finally, both entities will obtain necessary approvals to close the loan.

# APPENDIX A: ACRONYMS

## APPENDIX A: ACRONYMS

Table A-1 defines acronyms that are commonly used throughout this handbook.

TABLE A-1: ACRONYMS

Acronym	Definition
<b>AIS</b>	American Iron and Steel
<b>BABA</b>	Build America, Buy America Act
<b>C.F.R.</b>	Code of Federal Regulations
<b>EA</b>	Environmental Assessment
<b>EID</b>	Environmental Information Document
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	United States Environmental Protection Agency
<b>FCRA</b>	Federal Credit Reform Act of 1990
<b>FONSI</b>	Finding of No Significant Impact
<b>LOI</b>	Letter(s) of Interest
<b>NEPA</b>	National Environmental Policy Act of 1969
<b>NOFA</b>	Notice of Funding Availability
<b>NRSRO</b>	Nationally Recognized Statistical Rating Organization
<b>OGC</b>	Office of General Counsel
<b>OMB</b>	Office of Management and Budget
<b>OW</b>	Office of Water
<b>P.L.</b>	Public Law
<b>ROD</b>	Record of Decision
<b>SRF</b>	State Revolving Fund
<b>SWIFIA</b>	State Infrastructure Financing Authority WIFIA Program
<b>U.S.C.</b>	United States Code
<b>WIFIA</b>	Water Infrastructure Finance and Innovation Act of 2014
<b>WRRDA</b>	Water Resources Reform and Development Act of 2014

# APPENDIX B: DEFINITIONS

## APPENDIX B: DEFINITIONS

Table B-1 defines relevant terms employed throughout this handbook.

TABLE B-1: DEFINITIONS

Term	Definition
<b>Administrator</b>	Administrator of the U.S. Environmental Protection Agency.
<b>Applicant</b>	An entity selected to apply for WIFIA credit assistance following selection by the WIFIA Selection Committee.
<b>Borrower</b>	An eligible entity primarily liable for payment of the principal of or interest on a Federal credit instrument.
<b>Credit Subsidy Cost</b>	“Cost” under §502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. § 661a(5)), which is the net present value at the time the obligation is entered into. The credit subsidy cost for a given project is calculated by EPA in consultation with OMB. The credit subsidy cost must be less than the unobligated subsidy amount that has been appropriated by Congress to date.
<b>Federal Credit Instrument</b>	A secured loan or loan guarantee authorized to be made available under 33 U.S.C. §§ 3901-3914 with respect to a project.
<b>Investment-Grade Rating</b>	A rating category of BBB minus, Baa3, bbb minus, BBB(low), or higher assigned by a nationally recognized statistical rating organization (NRSRO) to project obligations offered into the capital markets.
<b>Loan Agreement</b>	A contractual agreement between EPA and the prospective borrower (and the lender, if applicable) that formalizes the terms and conditions established in the term sheet (or conditional term sheet) and authorizes the execution of a secured loan.
<b>Loan Guarantee</b>	Any guarantee or other pledge by the Administrator to pay all or part of the principal of and interest on a loan or other debt obligation issued by a borrower and funded by a lender.
<b>Nationally Recognized Statistical Rating Organization</b>	A credit rating agency identified and registered by the Office of Credit Ratings in the Securities and Exchange Commission under 15 U.S.C. § 78o-7.
<b>Project Obligation</b>	Any note, bond, debenture, or other debt obligation issued by a borrower in connection with the financing of a project, other than a federal credit instrument.
<b>Prospective Borrower</b>	An eligible entity seeking credit assistance.

Term	Definition
<b>Publicly Sponsored</b>	The prospective borrower can demonstrate, to the satisfaction of the Administrator, that it has consulted with the affected State, local, or tribal government in which the project is located, or is otherwise affected by the project, and that such government supports the proposed project. Support can be shown by a certified letter signed by the approving municipal department or similar agency, mayor or other similar designated authority, local ordinance, or any other means by which local government approval can be evidenced.
<b>Secured Loan</b>	A direct loan or other debt obligation (including a note, bond, debenture, and sale or lease financing arrangement) issued by a borrower and funded by the Administrator in connection with the financing of a project under 33 U.S.C. § 3908.
<b>State Infrastructure Financing Authority</b>	State entity established or designated by the Governor of a State to receive a capitalization grant provided by, or otherwise carry out the requirements of, title VI of the Federal Water Pollution Control Act (33 U.S.C. § 1381 et seq.) or section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300j-12). Commonly known as the State Revolving Fund (SRF) program.
<b>Substantial Completion</b>	The stage in the progress of the project when the project or designated portion thereof is sufficiently complete in accordance with the contract documents so that the project or designated portion thereof can be used for its intended use.
<b>Term Sheet</b>	A contractual agreement between the EPA and a prospective borrower (and lender, if applicable) that sets forth the key business terms and conditions of a Federal credit instrument.
<b>WIFIA Credit Assistance</b>	A secured loan or loan guarantee authorized to be made available under WIFIA.

# APPENDIX C: BASE PROGRAM SELECTION CRITERIA

## APPENDIX C: BASE PROGRAM SELECTION CRITERIA

### WHAT ARE THE SELECTION CRITERIA AND HOW ARE THEY USED?

The WIFIA program is required by statute to evaluate projects using selection criteria as established by statute, regulation, and the NOFA. For evaluation of requested loans from the WIFIA base program, the selection criteria are divided into three categories that represent critical considerations for selecting projects: Project Impact, Project Readiness, and Borrower Creditworthiness. Following analysis by WIFIA program staff, a determination is made for each project. Projects will be selected if they satisfy the conditions of each selection category in order of completion of LOI reviews.

Information regarding how EPA will consider each selection criterion is announced in each NOFA. For the Project Readiness and Borrower Creditworthiness categories, LOI review includes review of the preliminary engineering and environmental feasibility analysis and preliminary creditworthiness assessment, as described in section 6.3.

The WIFIA program selection criteria are as follows:

#### PROJECT IMPACT

1. 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. 33 U.S.C. § 3907(b)(2)(A); 40 C.F.R. § 35.10055(a)(1).
2. The extent to which the project (1) protects against extreme weather events, such as floods or hurricanes; or (2) helps maintain or protect the environment. 33 U.S.C. § 3907(b)(2)(F); 40 C.F.R. § 35.10055(a)(4); 40 C.F.R. § 35.10055(a)(5).
3. The extent to which a project serves regions with significant energy exploration, development, or production areas. 33 U.S.C. § 3907(b)(2)(G); 40 C.F.R. § 35.10055(a)(6).
4. 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. 33 U.S.C. § 3907(b)(2)(H); 40 C.F.R. § 35.10055(a)(7).

5. The extent to which the project addresses identified municipal, State, or regional priorities. 33 U.S.C. § 3907(b)(2)(I); 40 C.F.R. § 35.10055(a)(8).
6. 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. 40 C.F.R. § 35.10055(a)(12).
7. The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities. 40 C.F.R. § 35.10055(a)(13).
8. The extent to which the project reduces exposure to lead in the nation’s drinking water systems or addresses emerging contaminants. 40 C.F.R. § 35.10055(b).
9. The extent to which the project uses new or innovative approaches. 33 U.S.C. § 3907(b)(2)(D); 40 C.F.R. § 35.10055(a)(3).

## PROJECT READINESS

1. 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]. 33 U.S.C. § 3907(b)(2)(J); 40 C.F.R. § 35.10055(a)(9).
2. Preliminary engineering feasibility analysis score. 33 U.S.C. § 3907(a)(2); 33 U.S.C. § 3907(a)(6); 40 C.F.R. § 35.10015(c); 40 C.F.R. § 35.10045(a).

## BORROWER CREDITWORTHINESS

1. 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. 33 U.S.C. § 3907(b)(2)(C); 40 C.F.R. § 35.10055(a)(2).
2. The extent to which the project’s financing plan includes public or private financing in addition to assistance under [WIFIA]. 33 U.S.C. § 3907(b)(2)(B); 40 C.F.R. § 35.10055(a)(10).
3. The extent to which assistance under [WIFIA] reduces the contribution of Federal assistance to the project. 33 U.S.C. § 3907(b)(2)(K); 40 C.F.R. § 35.10055(a)(11).
4. The amount of budget authority required to fund the Federal credit instrument made available under [WIFIA]. 33 U.S.C. § 3907(b)(2)(E).
5. Preliminary creditworthiness assessment score. 33 U.S.C. § 3907(a)(1); 40 C.F.R. § 35.10015(c); 40 C.F.R. § 35.10045(a)(1); 40 C.F.R. § 35.10045(a)(4); 40 C.F.R. § 35.10045(b).

## HOW DO PROSPECTIVE BORROWERS ADDRESS SELECTION CRITERIA?

As noted in Section 5.2 of the Program Handbook, prospective borrowers provide information in their LOIs that allows the WIFIA program to evaluate their request in respect to the selection criteria above. The prospective borrower provides key engineering and credit information in Section B of the LOI, and in [Section C of the LOI](#), the prospective borrower describes the potential benefits to be achieved by the project that would be financed with WIFIA assistance. Because the selection criteria encompass a wide range of factors, it is not expected that most projects will be able to fully address all of them. However, the prospective borrower should make their best case to EPA and demonstrate how financing their projects will help the WIFIA program meet its goals. In responding, the prospective borrowers should provide specific details, and, when applicable, reference supporting documentation.

### PROJECT IMPACT

#### CRITERION 1: NATIONAL OR REGIONAL SIGNIFICANCE

*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. 33 U.S.C. § 3907(b)(2)(A); 40 C.F.R. § 35.10055(a)(1).*

EPA will evaluate the quality and extent to which the project can benefit the economy and public for a region or the nation. Projects will be differentiated based on the scope of their impact.

If applicable to their projects, prospective borrowers can demonstrate improvement to economic conditions and public benefits by providing the following information:

- Economic growth supported by the project, such as increased revenues, construction and post-construction job creation, keeping or attracting new industries, etc. (Q. C-1)
- Voluntary procedures to promote domestic preference for products used in construction (Q. C-2)
- How the project supports international commerce. (Q. C-3)
- How the project protects human health and the environment, including drinking water protection, source water protection, water quality, and water quantity. (Q. C-4)

In responding to the questions, the prospective borrower should demonstrate how the project benefits the project's service area and, if applicable how the project or components of the project can benefit regions which are not directly served by the project, multiple states, or the nation. Projects that have a net negative impact on the economy and/or the public will be eliminated from further consideration.

## CRITERION 2: PROTECTION AGAINST EXTREME WEATHER EVENTS

*The extent to which the project (1) protects against extreme weather events, such as floods or hurricanes; or (2) helps maintain or protect the environment: 33 U.S.C. § 3907(b)(2)(F); 40 C.F.R. § 35.10055(a)(4); 40 C.F.R. § 35.10055(a)(5).*

EPA will evaluate projects on the depth and degree to which they protect against extreme weather events, such as floods or hurricanes, or helps maintain or protect the environment.

If applicable to their project, prospective borrowers can demonstrate protection against extreme weather events by providing the following information:

- How the project protects the system, project specific asset, or community from extreme weather events such temperature, storms, floods, or sea level rise (C-Q.5)
- If and how the project reduces greenhouse gas emissions (C-Q.6)

Extreme weather impacts can include:

- Drought: Reduced groundwater recharge, lower lake and reservoir levels, changes in seasonal runoff and loss of snowpack.
- Water Quality Degradation: Low flow conditions and altered water quality, saltwater intrusion into aquifers, altered surface water quality.
- Floods: High flow events and flooding, flooding from coastal storm surges.
- Ecosystem Changes: Loss of coastal landforms/wetlands, increased fire risk and altered vegetation.
- Service Demand and Use: Volume and temperature challenges, changes in water demand, changes in energy sector needs, changes in energy needs of utilities.

Examples of project elements that can protect against extreme weather events include the following:

- Mitigation planning and risk assessments.
- Flood protection or mitigation.
- Green infrastructure that addresses flooding, drought, urban heat island effects, energy demand, protection of coastal areas, etc.
- Backup power.
- Emergency response plans.
- Enhanced infrastructure resiliency.
- Water recycling and reuse.
- Managed aquifer recovery.

EPA will evaluate the project's purpose and description in determining how the project helps maintain or protect the environment.

## CRITERION 3: SERVES ENERGY EXPLORATION OR PRODUCTION AREAS

*The extent to which the project serves regions with significant energy exploration, development, or production areas: 33 U.S.C. § 3907(b)(2)(G); 40 C.F.R. § 35.10055(a)(6).*



EPA will evaluate the project on the depth and degree to which it helps support a population in a region with energy exploration, development, or production areas.

If applicable to their projects, prospective borrowers can demonstrate serving energy exploration or production areas by providing the following information:

- How the project serves a population in a region impacted by significant energy exploration, development, or production areas. (Q. C-7)

For purposes of this criterion, a region can consist of a service area within a municipality, portions of a municipality, multiple neighboring municipalities, a state, or multiple states.

#### **CRITERION 4: SERVES REGIONS WITH WATER RESOURCE CHALLENGES**

*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; 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. 33 U.S.C. § 3907(b)(2)(H); 40 C.F.R. § 35.10055(a)(7).*

EPA will evaluate each project on the depth and degree to which it serves regions with significant water resource challenges. Prospective borrowers should identify the water resource challenge(s) that their projects address. For each applicable water resource challenge, they should demonstrate how the proposed project addresses the water resource challenge and, if possible, how much of the challenge is expected to be alleviated by the project. Prospective borrowers should also discuss how the water resource challenge affects their ability to serve their customers, maintain or improve service levels, and/or poses a significant risk to human health or life.

If applicable to their projects, prospective borrowers can demonstrate serving regions with water resource challenges by providing the following information:

- How the project protects human health and/or the environment, including drinking water protection, source water protection, water quality, and water quantity. (Q. C-4)
- How the project protects the system, project specific asset, or community from extreme weather events such temperature, storms, floods, or sea level (Q. C-5)
- If and how the project reduces greenhouse gas emissions (Q. C-6)
- How the project protects water resources with exceptional recreational value or ecological importance. Note: Exceptional recreational value considers the economic value of recreation activities and the scarcity of alternative water resources available for similar types of recreation. Exceptional ecological importance can include water bodies designated as Tier 3 Anti Degradation water bodies pursuant to the Clean Water Act, water bodies designated by states or EPA as Outstanding National Resource Waters (or similar distinction), national wild and scenic

- rivers, National Estuaries, and areas of multistate collaboration, such as the Long Island Sound (Q. C-8)
- Whether the project is identified as a municipal, regional, state, or multistate priority. Documentation of the agreement or prioritization plan should be attached. (Q. C-9)
- For purposes of this criterion, a region can consist of a service area within a municipality, portions of a municipality, multiple neighboring municipalities, a state, or multiple states. Where a region's water resource challenges include source water quality, projects can address the challenge at the source or within the drinking water system.

#### **CRITERION 5: ADDRESSES IDENTIFIED PRIORITIES**

*The extent to which the project addresses identified municipal, State, or regional priorities. 33 U.S.C. § 3907(b)(2)(I); 40 C.F.R. § 35.10055(a)(8).*

EPA will evaluate each project on the depth and degree to which it addresses identified municipal, state, or regional priorities.

If applicable to their projects, prospective borrowers can demonstrate that their project addresses municipal, State, or regional priorities by providing the following information:

- Whether the project is identified as a municipal, regional, state, or multistate priority. Documentation of the agreement or prioritization plan should be attached (Q. C-9)
- For purposes of this criterion, a region can consist of a service area within a municipality, portions of a municipality, multiple neighboring municipalities, a state, or multiple states. Where a region's water resource challenges include source water quality, projects can address the challenge at the source or within the drinking water system.

#### **CRITERION 6: REPAIR, REHABILITATION, OR REPLACEMENT**

*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. 40 C.F.R. § 35.10055(a)(12).*

EPA will evaluate each project based on how much of the project costs are for the repair, rehabilitation or replacement of a treatment works, community water system, or aging water distribution or wastewater collection system. This includes repair, rehabilitation, or replacement projects to reduce exposure to lead and emerging contaminants in drinking water. EPA understands the need to repair, rehabilitate, or replace certain system assets in advance of eminent failure to achieve cost efficiencies and maintain system service levels. If the project is to construct a new infrastructure in an existing system, the prospective borrower should explain how this project replaces aging infrastructure and/or improves system performance.

If applicable to their projects, prospective borrowers can demonstrate that their project is for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or wastewater collection system by providing the following information:

- A clear description of the proposed project that describes how it will meet the system's repair, rehabilitation, or replacement needs. (Q. A-4)
- Documentation, such as preliminary design/engineering report or planning document, that

demonstrates that system's repair, rehabilitation, or replacement needs that are being addressed through the proposed project. (Q. B-1)

## **CRITERION 7: ECONOMICALLY STRESSED COMMUNITIES**

*The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities. 40 C.F.R. § 35.10055(a)(13).*

EPA will evaluate the depth and degree to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities. Access to financing for critical infrastructure projects in these communities is often lacking or difficult to obtain.

EPA will be evaluating this criterion for each prospective borrower using Median Household Income (MHI) and poverty rate from the American Community Survey and other federal data sources based on the description of the service area and jurisdictions served. (Q. A-13).

## **CRITERION 8: REDUCES EXPOSURE TO LEAD AND EMERGING CONTAMINANTS**

*The extent to which the project reduces exposure to lead in the nation's drinking water systems or addresses emerging contaminants. 40 C.F.R. § 35.10055(b).*

EPA will evaluate the project on how much of the project is reducing exposure to lead and emerging contaminants in the nation's drinking water and wastewater.

If applicable to their projects, prospective borrowers can demonstrate that their project reduces exposure to lead or addresses emerging contaminants by providing the following information:

- How the project or components of the project reduces exposure to lead or emerging contaminants. (Q. C-11)

Project elements can include:

- Identification and replacement of lead service lines and distribution pipes, including galvanized steel pipes.
- Corrosion control optimization in the water system.
- Rehabilitation of wells or development of eligible sources to replace contaminated sources.
- Implementing optimized source water blends to minimize corrosion and reduce contaminants.
- Rehabilitation, replacement, or installation of pipes to prevent contamination caused by leaky or broken pipes.

Improvements to meet or maintain drinking water quality standards. A contaminant is considered emerging for drinking water systems if:

- It is found on this list: <https://www.epa.gov/ccl/chemical-contaminants-ccl-4> OR
- It is currently not subject to any proposed or promulgated national primary drinking water regulations,
- it is known or anticipated to occur in public water systems, and
- it may require regulation under the Safe Drinking Water Act (SDWA).

A contaminant is considered emerging for wastewater systems if:

- The substance is a newly identified or re-emerging manufactured or naturally occurring physical, chemical, biological, or radiological material that may be harmful to humans under certain exposure scenarios and do not have an applicable regulatory health standard.

## CRITERION 9: NEW OR INNOVATIVE APPROACHES

*The extent to which the project uses new or innovative approaches. 33 U.S.C. § 3907(b)(2)(D); 40 C.F.R. § 35.10055(a)(3).*

EPA will evaluate how the project uses new or innovative approaches. If applicable to their projects, prospective borrowers can demonstrate that their project uses new or innovative approaches by providing the following information:

- How the project will include costs for implementing cybersecurity measures. (Q. C-12)
- How the project will implement new or innovative technology(ies), such as using renewable or alternate sources of energy, water recycling, or desalination. (Q. C-13)
- How the project will use new or innovative approaches to plan, design, manage, and/or implement the project. (Q. C-14)

Innovative approaches will include, but are not limited to:

- Implementation of capital projects for cybersecurity
- Use of energy efficient parts or systems for a significant portion of the project.
- Use of green infrastructure elements
- Development of alternate sources of drinking water and alternate water supplies through aquifer recharge, water recycling or desalination
- A novel application of an existing method or technology.

## PROJECT READINESS

### CRITERION 1: READINESS TO PROCEED

*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]. 33 U.S.C. § 3907(b)(2)(J); 40 C.F.R. § 35.10055(a)(9).*

EPA will evaluate the project on the depth and degree to which it is ready to proceed toward development. In doing so, EPA will assess whether there is a reasonable expectation that the contracting process the project can commence by not later than 90 days after obligation.

EPA will evaluate:

- Where the project is in the schedule at the time of the LOI submittal.
- Whether there are any other issues that may affect the development and financing of the project, such as community support, pending legislation, permitting, or litigation.
- The reasonableness and level of detail provided in the projected development schedule for specifications and bid documents for traditional project delivery methods, such as design-bid-build.
- The projected development schedule for procurement documents, such as Requests for Qualifications and Proposals, for alternative project delivery methods, such as design-build projects.
- Prospective borrowers should provide information about the following when responding to this criterion:
- Project delivery method (i.e., design-bid-build, design-build, public private partnership).

- The expected dates for bidding/procurement and construction for the project (Can reference project schedule).
- Any issues that may affect the development and financing of the project, such as community support, pending legislation, permitting, or litigation.
- Design stage at LOI submittal.

Prospective borrowers should refer to Review of Section A: Q8, Q9 and Section B: Q2 in the LOI to provide information about this criterion.

## **CRITERION 2: PRELIMINARY ENGINEERING FEASIBILITY ANALYSIS**

Preliminary engineering feasibility analysis score. 33 U.S.C. § 3907(a)(2); 33 U.S.C. § 3907(a)(6); 40 C.F.R. § 35.10015(c); 40 C.F.R. § 35.10045(a).

See section 6.3. Prospective borrowers should refer to Section A: Q4 and Section B: Q1 in the LOI to provide information about this criterion.

## **BORROWER CREDITWORTHINESS**

### **CRITERION 1: ENABLES PROJECT TO PROCEED EARLIER**

*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. 33 U.S.C. § 3907(b)(2)(C); 40 C.F.R. § 35.10055(a)(2).*

EPA will evaluate the likelihood that WIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. EPA will consider whether WIFIA funding accelerates an individual project receiving a loan or, if by providing significant savings on one project, WIFIA assistance allows a prospective borrower to accelerate additional non-WIFIA projects.

Prospective borrowers can indicate that their project would proceed at an earlier date by receiving a WIFIA loan by:

- Selecting the appropriate description of how WIFIA funding would impact project development. (Q. C-15)

### **CRITERION 2: FINANCING PLAN**

*The extent to which the project's financing plan includes public or private financing in addition to assistance under [WIFIA]. 33 U.S.C. § 3907(b)(2)(B); 40 C.F.R. § 35.10055(a)(10).*

EPA will evaluate the LOI on the depth and degree to which the project's financing plan includes public or private financing in addition to WIFIA assistance.

Prospective borrowers can indicate the other sources of funding for their project, including whether they are public or private financing, by:

- Completing the Sources and Uses of Funding table for the project. (Q. B-5).

### **CRITERION 3: REDUCTION OF FEDERAL ASSISTANCE**

*The extent to which assistance under [WIFIA] reduces the contribution of Federal assistance to the*

*project.* 33 U.S.C. § 3907(b)(2)(K); 40 C.F.R. § 35.10055(a)(11).

EPA will evaluate each project on the depth and degree to which WIFIA assistance reduces the contribution of Federal assistance to the project.

Prospective borrowers can indicate the extent to which receiving the WIFIA loan will reduce the contribution of Federal assistance to the project by:

- Selecting yes or no. (Q. C-16)

#### **CRITERION 4: USE OF BUDGET AUTHORITY**

*The amount of budget authority required to fund the Federal credit instrument made available under [WIFIA].* 33 U.S.C. § 3907(b)(2)(E).

The amount of budget authority required to fund a WIFIA loan is a function of the borrower's preliminary creditworthiness assessment and the size of the requested loan. A low preliminary creditworthiness assessment score will result in a greater use of budget authority than a similarly sized loan with a high preliminary creditworthiness assessment score. A large loan will result in a greater use of budget authority than a small loan with similar preliminary creditworthiness assessment scores. EPA estimates the amount of budget authority required to fund the requested WIFIA loan and uses that amount in scoring this criterion.

#### **CRITERION 5: PRELIMINARY CREDITWORTHINESS ASSESSMENT**

Preliminary creditworthiness assessment score. 33 U.S.C. § 3907(a)(1); 40 C.F.R. § 35.10015(c); 40 C.F.R. § 35.10045(a)(1); 40 C.F.R. § 35.10045(a)(4); 40 C.F.R. § 35.10045(b).

See section 5.4 for an in-depth discussion of the assessment.

#### **SELECTION CRITERIA AND LOI CROSSWALK**

Table C-1 provides a crosswalk between the questions in the LOI and the selection criteria that EPA evaluates.

Table C-1: Selection Criteria and LOI Crosswalk

SELECTION CRITERION	LOI RESPONSES EVALUATED
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. 33 U.S.C. § 3907(b)(2)(A); 40 C.F.R. § 35.10055(a)(1).	Section C: Q1, Q2, Q3, Q4, Q5
The extent to which the project uses new or innovative approaches. 33 U.S.C. § 3907(b)(2)(D); 40 C.F.R. § 35.10055(a)(3).	Section C: Q12, Q13, Q14
The extent to which the project (1) protects against extreme weather events, such as floods or hurricanes; or (2) helps maintain or protect the environment: 33 U.S.C. § 3907(b)(2)(F); 40 C.F.R. § 35.10055(a)(4); 40 C.F.R. § 35.10055(a)(5).	Section C: Q5, Q6
The extent to which the project serves regions with significant energy exploration, development, or production areas: 33 U.S.C. § 3907(b)(2)(G); 40 C.F.R. § 35.10055(a)(6).	Section C: Q7
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; and (5) water resources with exceptional recreational value or ecological importance. 33 U.S.C. § 3907(b)(2)(H); 40 C.F.R. § 35.10055(a)(7).	Section C: Q5, Q6, Q8, Q9
The extent to which the project addresses identified municipal, State, or regional priorities. 33 U.S.C. § 3907(b)(2)(I); 40 C.F.R. § 35.10055(a)(8).	Section C: Q9, Q10
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. 40 C.F.R. § 35.10055(a)(12).	Review of Section A: Q4 and Section B: Q1
The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities. 40 C.F.R. § 35.10055(a)(13).	Section A: Q13 Evaluated based on national census data related to jurisdiction
The extent to which the project reduces exposure to lead in the nation’s drinking water systems or addresses emerging contaminants. 40 C.F.R. § 35.10055(b).	Section C: Q11
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]. 33 U.S.C. § 3907(b)(2)(J); 40 C.F.R. § 35.10055(a)(9).	Review of Section A: Q8, Q9 and Section B, Q2
Preliminary engineering feasibility analysis score. 33 U.S.C. § 3907(a)(2); 33 U.S.C. § 3907(a)(6); 40 C.F.R. § 35.10015(c); 40 C.F.R. § 35.10045(a).	Review of Section A: Q4 and Section B: Q1
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. 33 U.S.C. § 3907(b)(2)(C); 40 C.F.R. § 35.10055(a)(2).	Section C: Q15
The extent to which the project financing plan includes public or private financing in addition to assistance under [WIFIA]. 33 U.S.C. § 3907(b)(2)(B); 40 C.F.R. § 35.10055(a)(10).	Section B: Q6
The extent to which assistance under [WIFIA] reduces the contribution of Federal assistance to the project. 33 U.S.C. § 3907(b)(2)(K); 40 C.F.R. § 35.10055(a)(11).	Section C: Q16
The amount of budget authority required to fund the Federal credit instrument made available under [WIFIA]. 33 U.S.C. § 3907(b)(2)(E).	Evaluated as part of the creditworthiness review
Preliminary creditworthiness assessment score. 33 U.S.C. § 3907(a)(1); 40 C.F.R. § 35.10015(c); 40 C.F.R. § 35.10045(a)(1); 40 C.F.R. § 35.10045(a)(4); 40 C.F.R. § 35.10045(b).	Section B: Q3, Q4, Q5 and review of credit documents and credit information provided

# APPENDIX D: FEE SCHEDULE

## APPENDIX D: FEE SCHEDULE

Eligible WIFIA program prospective borrowers and borrowers will be responsible for all fees and costs associated with the WIFIA program.

TABLE D-1: WIFIA PROGRAM FEES<sup>42</sup>

Fee Type	Amount	Specified in Which Document	Applies to Whom
Application Fee	\$100,000 or \$25,000 (for projects serving small communities)	Application Form	Applicant
Credit Processing Fee	EPA's cost of providing credit assistance minus application fee	Invoice at Closing	Applicant
Optional Supplemental Fee	As applicable by agreement between WIFIA program and applicant	Loan Agreement	Applicant
Loan Servicing Fee	As applicable based on loan size and project status. Approximately between \$8,000 and \$26,000 per year.	Loan Agreement	Borrowers
Loan Servicing Fee- State infrastructure financing authorities	Approximately between \$8,000 and \$11,000 per year	Loan Agreement	State infrastructure financing authority borrowers
Extraordinary Expenses Fee	As applicable	Loan Agreement	Distressed borrowers

<sup>42</sup> The fee rule can be found in the [Federal Register](#).



# APPENDIX E: COMPLIANCE REQUIREMENTS

## APPENDIX E: COMPLIANCE REQUIREMENTS

Projects receiving WIFIA credit assistance must comply with all federal laws and regulations, including, but not limited to the requirements described in Section 2.7 and the following.

### ENVIRONMENTAL AUTHORITIES

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended: <https://www.nps.gov/archeology/tools/laws/ahpa.htm>
- Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-mm: <http://www.nps.gov/archeology/tools/Laws/arpa.htm>
- Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c: <https://www.fws.gov/midwest/midwestbird/EaglePermits/bagepa.html>
- Clean Air Act, Pub. L. 95-95, as amended: <https://www.epa.gov/clean-air-act-overview>
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended: <https://www.epa.gov/laws-regulations/summary-clean-water-act>
- Coastal Barrier Resources Act, Pub. L. 97-348: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html>
- Coastal Zone Management Act, Pub. L. 92-583, as amended: <https://coast.noaa.gov/czm/about/>
- Farmland Protection Policy Act, Pub. L. 97-98: [https://www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143\\_008275](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275)
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Environmental Justice, Executive Order 12898, 59 Fed. Reg. 7629, February 11, 1994: <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended: <https://www.fws.gov/laws/lawsdigest/fwcoord.html>
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265: <https://www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act>

- Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407: <http://www.nmfs.noaa.gov/pr/laws/mmpa/>
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712: <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>
- National Historic Preservation Act, Pub. L. 89-655, as amended: <https://www.nps.gov/archeology/tools/laws/NHPA.htm>
- National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., <https://www.epa.gov/nepa>
- Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq: <https://www.nps.gov/nagpra/>
- Protection of Children from Environmental Health Risks and Safety Risks, Executive Order 13045, 62 Fed. Reg. 19885, April 21, 1997: <https://www.gpo.gov/fdsys/pkg/FR-1997-04-23/pdf/97-10695.pdf>
- Protection of Wetlands, Executive Order 11990, 42 Fed. Reg. 26961, May 24, 1977, as amended by Executive Order 12608, 52 Fed. Reg. 34617, Sept. 14, 1987: <https://www.epa.gov/cwa-404>
- Rivers and Harbors Act, 33 U.S.C. § 403: <http://www.sam.usace.army.mil/Missions/Regulatory/RegulatoryFAQ/RiversandHarborsAppropriationActof1899.aspx>
- Safe Drinking Water Act, Pub L. 93-523, as amended: <https://www.epa.gov/ground-water-and-drinking-water>
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended: <https://rivers.gov/>
- Wilderness Act, 16 U.S.C. § 1131 et seq.: <https://wilderness.nps.gov/faqnew.cfm>

## ECONOMIC AND MISCELLANEOUS AUTHORITIES

- Debarment and Suspension, Executive Order 12549, 51 Fed. Reg. 6370, Feb. 18, 1986: <https://www.archives.gov/federal-register/codification/executive-order/12549.html>
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372, 47 Fed. Reg. 30959, July 14, 1982: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning)
- Drug-Free Workplace Act, Pub. L. 100-690: <https://webapps.dol.gov/elaws/asp/drugfree/screen4.htm>
- Labor Standards, 33 U.S.C. § 1372, <https://www.dol.gov/whd/govcontracts/dbra.htm>
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121: <https://www.epa.gov/grants/lobbying-and-litigation-information-federal-grants-cooperative-agreements-contracts-and-loans>
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water

Act, and Executive Order 11738, 38 Fed. Reg. 25161, Sept. 10, 1973:

<https://www.archives.gov/federal-register/codification/executive-order/11738.html>

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.): <https://www.gpo.gov/fdsys/pkg/FR-2005-01-04/pdf/05-6.pdf>

## CIVIL RIGHTS, NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AUTHORITIES

- Age Discrimination Act, Pub. L. 94-135: <https://www.eeoc.gov/laws/statutes/adea.cfm>
- Equal Employment Opportunity, Executive Order 11246, 30 Fed. Reg. 12319, Sept. 24, 1965: [https://www.dol.gov/ofccp/regs/compliance/ca\\_11246.htm](https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm)
- Section 13 of the Clean Water Act, Pub. L. 92-500: <https://www.epa.gov/ocr/external-civil-rights-compliance-office-title-vi>
- Section 504 of the Rehabilitation Act, Pub. L. 93-112 supplemented by Executive Orders 11914, 41 Fed. Reg. 17871, April 29, 1976 and 11250, 30 Fed. Reg. 13003, October 13, 1965, <https://www.epa.gov/ocr/external-civil-rights-compliance-office-title-vi>
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.): <https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice>

# APPENDIX F: CONFIDENTIAL BUSINESS REQUIREMENTS

## APPENDIX F: CONFIDENTIAL BUSINESS REQUIREMENTS

A prospective borrower may assert a business confidentiality claim covering part or all of the information submitted to EPA as part of its *[letter of interest]* *[application]* in a manner consistent with [40 C.F.R. § 2.203](#), 41 Fed. Reg. 36902 (Sept. 1, 1976), by placing on (or attaching to) the information a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as trade secret, proprietary, or company confidential. The prospective borrower should also state whether it desires confidential treatment until a certain date or until the occurrence of a certain event. Information covered by a business confidentiality claim will be disclosed by EPA only to the extent and only by means of the procedures set forth under [40 C.F.R. Part 2, Subpart B](#). Information that is not accompanied by a business confidentiality claim when it is received by EPA may be made available to the public by EPA without further notice to the applicant.

EPA will presume that information claimed as CBI in accordance with the above procedures is entitled to confidential treatment until it receives a Freedom of Information Act request for the information or until further review is warranted. See [40 C.F.R. Part 2, Subpart B](#). EPA will then afford the prospective borrower an opportunity to substantiate the CBI claim, i.e., demonstrate to the Agency that the release of the information would impair EPA's ability to obtain similar information in the future, or that its release would likely cause substantial competitive harm, before making a final confidentiality determination on the information. Applicants may waive or withdraw CBI claims at any time. EPA reserves the right to request substantiation at any time following a business confidentiality claim.

**Confidential business information (CBI)** refers to "commercial or financial information that is obtained from a person and that is privileged or confidential." [5 U.S.C. § 552\(b\)\(4\)](#). Information that qualifies as CBI is exempt from disclosure under Exemption 4 of the Freedom of Information Act ("FOIA"), [5 U.S.C. § 552\(b\)\(4\)](#), upon a finding that the information is entitled to confidential treatment. Information in the public domain is not "confidential" and cannot qualify for confidential treatment under Exemption 4.

For each item or class of information that is claimed as CBI, the Agency will ask submitters to answer the following questions, giving as much detail as possible. EPA will consider the comments in response to these questions when determining whether the information has been shown to be entitled to confidential treatment.

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the

information be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.
5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.
9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.
10. If you believe any information to be (a) trade secret (s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret (s).
11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

The prospective borrower bears the burden of substantiating a confidentiality or trade secret claim. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

# APPENDIX G: BASE PROGRAM LETTER OF INTEREST TIPS

## APPENDIX G: BASE PROGRAM LETTER OF INTEREST TIPS

This section provides prospective borrowers with some tips to consider while preparing and submitting a LOI.

### GENERAL TIPS

- Read the instructions in the NOFA and the program handbook prior to completing your LOI.
- Answer every question and when relevant provide additional supporting material to support your answer.
- Provide specific references and file names when pointing to supporting documents.
- Remember your audience is learning about your system for the first time and needs contextual information to understand your project.
- Attend one of the virtual [WIFIA office hours](#) offered or schedule a one-on-one meeting with WIFIA program staff.
- Ask questions: contact us at [wifia@epa.gov](mailto:wifia@epa.gov).
- Review the [WIFIA Letter of Interest Checklist](#) before submitting your LOI.

### SECTION A: KEY LOAN INFORMATION

- Loan Closing Date Tips
  - If possible, anticipate how federal compliance requirements could impact schedule.
- Private entities must demonstrate public sponsorship by including a certified letter signed by the approving State, tribal, or municipal department or similar agency; governor, mayor, or other similar designated authority; statute or local ordinance, or any other means by which government approval can be evidenced. The public entity must be a sponsor or regulator of the project.

### SECTION B: ENGINEERING & CREDIT

#### ENGINEERING:

- Provide enough information for the WIFIA program to evaluate engineering and environmental feasibility, including scope, plan, schedule, and cost details, at the current project stage.
- Submit complete documents as attachments. Identify in the LOI or through annotation where relevant information is located.
- If multiple projects are included in one LOI, provide cost, scope (including locations and major capacity or dimension details), and schedule information for each individual project being proposed.

- Include major planning, design, and construction start and end dates in the schedule.

### CREDIT:

- Clearly present the project's sources and uses of funding.
- Propose WIFIA's lien priority including whether the WIFIA loan will be subordinate to ongoing non-project debt secured with the same pledge.
- Provide consistent, transparent, and realistic assumptions. The WIFIA program will review the credit rating or pro forma to validate these assumptions.
- Pro Forma Tips (Note: A pro forma is only required if the prospective borrower cannot provide an existing credit rating that is the same security and priority of the proposed WIFIA loan.)

A financial pro forma provides EPA with insight into the borrower's operating performance and their ability to manage existing and future debt payments. The pro forma focuses on four key components: Operating performance, cash available for capital expenditures and other obligations, debt service coverage, and capital structure.

- Income Statement Section: Provides an overview of the borrower's current and projected operational performance and identifies key revenues and expenses, providing a general understanding of the project's operating and net income.
- Cash Flow & Debt Service Coverage Sections: Using the cash flow statement and the income statement's net income and expenses, we can determine the borrower's net revenues and Cash Flow Available for Debt Service (CFADS), which help inform the WIFIA review of the borrower's ability to fund debt service and other fixed obligations with generated net revenues.
- Debt Balances Section: Prospective borrowers may have existing, amortizing debt on the balance sheet. Debt balances must be shown through the life of the loan. Illustrates when new debt issues are planned and when existing obligations will be retired.

## SECTION C: SELECTION CRITERIA

- Responses should generally be one to three paragraphs long.
- Responses should focus on how the project requesting WIFIA funding relates to the question asked.
- Reference Appendix C of this handbook which describes how each criterion will be evaluated.

## SECTION D: CONTACT INFORMATION

- To allow for quick and timely communication, list at least one staff person who works day-to-day on the project as the contact.

## SECTION E: CERTIFICATIONS

- Make sure to read and sign all the signature boxes.

## SECTION F: NOTIFICATION OF SRF

- Initial the opt-out line in the Notification to the SRF signature box only if LOI materials *should not* be shared with the relevant state SRF program.



# APPENDIX H: NEPA APPLICABILITY OVERVIEW

## APPENDIX H: NEPA APPLICABILITY OVERVIEW

This Appendix presents a summary of EPA’s NEPA Implementing Procedures titled “[Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act](#)” (40 CFR Part 6). EPA’s NEPA Implementing Procedures outlines EPA’s environmental review procedures and guides EPA when identifying the appropriate NEPA compliance path for proposed projects. This includes determining whether the proposed action meets the criteria for categorical exclusion or whether it requires preparation of an EA or an EIS to identify and evaluate its environmental impacts. To learn more about project eligibility under WIFIA’s Programmatic Environmental Assessment, go to <http://www.epa.gov/wifia>.

### CATEGORICAL EXCLUSION

EPA determines if a proposed project qualifies for a Categorical Exclusion under 40 C.F.R. § 6.204(a)(1)(ii) or 40 C.F.R. § 6.204(a)(1)(iii), with consideration of extraordinary circumstances under 40 C.F.R. § 6.204(b). Table H-1 below outlines the above referenced implementing regulations for CATEXs.

TABLE H-1: CATEX ASSESSMENT CRITERIA

Is the project eligible for a categorical exclusion? <sup>43</sup>	
Answer the following questions in their entirety to make this determination.	
If yes to any, CATEX may apply	<p>Does the project involve existing infrastructure systems (e.g., sewer systems; drinking water supply systems; stormwater systems, including combined sewer overflow systems) and involve:</p> <ul style="list-style-type: none"> <li>• Minor upgrading?</li> <li>• Minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and its components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems)?</li> <li>• Construction of new minor ancillary facilities next door on the same property as existing facilities?</li> </ul>
	<p>Will the project occur in unsewered communities and involve replacing existing onsite systems with ones that do not:</p> <ul style="list-style-type: none"> <li>• Substantially increase discharge volumes or pollutant loadings from existing sources?</li> <li>• Relocate existing discharge?</li> </ul>

<sup>43</sup> Refer to 40 C.F.R. § 6.204(a)(1) for more on CATEX determination. This list only references relevant CATEX components.

If yes to any, CATEX does not apply	<p>Will the project:</p> <ul style="list-style-type: none"> <li>• Involve new or relocated discharges to surface or ground water?</li> <li>• Be likely to substantially increase the volume or loading of pollutants to the receiving water?</li> <li>• Provide capacity to serve a population 30% greater than the existing population?</li> <li>• Involve actions not supported by the state (or other regional) growth plan or strategy?</li> <li>• Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for future development?</li> </ul>
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Does the project involve any of the following extraordinary circumstances, which would make it ineligible for a categorical exclusion? <sup>44</sup>	
If yes to any, CATEX does not apply	It is expected to have potentially significant impacts on the quality of the human environment, either immediately or cumulatively over time.
	It is expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally recognized Indian tribal communities.
	It is expected to significantly affect federally listed, threatened, or endangered species, or their critical habitat.
	It is expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including (but not limited to) property listed on or eligible for the National Register of Historic Places.
	It is expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
	It is expected to cause significant adverse air quality effects.
	It is expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or the growth and distribution of population, including a change to the character of existing residential areas.
	It may not be consistent with state, local, or federally recognized Indian tribe–approved land use plans, or with federal land management plans.

<sup>44</sup> Refer to 40 C.F.R. § 6.204(b) for more on extraordinary circumstances.



It is expected to cause significant public controversy about an environmental impact it may have.

It is expected to involve providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.

The project is expected to conflict with federal, state, local, or federally recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

## ENVIRONMENTAL ASSESSMENT / ENVIRONMENTAL IMPACT STATEMENT

To determine if an environmental assessment or environmental impact statement should be prepared for a project, EPA will consider EPA’s NEPA Implementing Regulations for Environmental Assessments (40 CFR §6.205) and Environmental Impact Statements (40 CFR §6.207). EPA will also consider additional implementing regulations for EISs found at 40 CFR 1507.3(b)(2). EPA will consider these assessment criteria if the proposed action does not qualify for a CATEX. Table H-2 below outlines the above referenced implementing regulations for EAs and EISs.

TABLE H-2: EA AND EIS ASSESSMENT CRITERIA

Will the project require an Environmental Assessment (EA) and/or a more detailed Environmental Impact Statement (EIS)?	
If yes to any, an EA is normally required	Is the project expected to have environmental impacts that are not significant, or whose significance is not known?
	<p>More specifically, will the project involve any of the following, which typically require the preparation of an EA?</p> <ul style="list-style-type: none"> <li>• The award of wastewater treatment construction grants under Title II of the Clean Water Act.</li> <li>• EPA’s issuance of new source NPDES permits under Section 402 of the Clean Water Act.</li> <li>• EPA actions involving renovations or new construction of facilities.</li> </ul>
If yes to any, an EIS is normally required	Will the project significantly affect the quality of the human environment, including actions for which the EA analysis demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to or mitigation of the proposed action?
	Does the project involve new regional wastewater treatment facilities or water supply systems for a community with a population greater than 100,000?
	Does the project involve expansions of existing wastewater treatment facilities that will increase existing discharge to an impaired water by greater than 10 million gallons per day?
	Does the project involve issuance of new source NPDES permit for a new major industrial discharge?
	Does the project involve issuance of a new source NPDES permit for a new oil/gas development and production operation on the outer continental shelf?

	Does the project involve issuance of a new source NPDES permit for a deepwater port with a projected discharge more than 10 mgd?
	Does the project involve discharge treated effluent from a new or modified existing facility into a body of water and the discharge that is likely to have a significant effect on the quality of the receiving waters?
	Is the proposed action likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels?
	Is the proposed action likely to have significant adverse effects on surface water reservoirs or navigation projects?
	Will the proposed action be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans?
	Will the proposed action be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment?
	Is the proposed action likely to significantly affect the environment through the release of radioactive, hazardous or toxic substances, or biota?
	Does the proposed action involve uncertain environmental effects or highly unique environmental risks that are likely to be significant?
	Is the proposed action likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places?
	Is the proposed action likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat?
	The proposed action in conjunction with related federal, state, or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
	The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.

# APPENDIX I: RE-EXECUTION OF WIFIA LOAN AGREEMENT

## APPENDIX I: RE-EXECUTION OF WIFIA LOAN AGREEMENT

The WIFIA program offers fixed-rate loans. The interest rate of the WIFIA loan is determined on the closing date of the loan agreement. In limited circumstances the program and the borrower may re-execute the WIFIA loan to re-set of the interest rate to the SLGS rate (plus one basis point) on the date of the re-execution. There are restrictions and limitations to qualify for a loan re-execution:

- Re-execution is only available for loans which have not had a disbursement of funds.
- This flexibility will only be available one time per loan.
- Re-execution of the loan agreement does not re-open the whole loan agreement for re-negotiation.
- The terms and conditions and loan amount cannot change.
- Project must be in pre-construction or under construction and the value of the eligible project costs remaining at the time of re-execution must be more than the WIFIA loan.

The process to re-execute a WIFIA loan agreement and re-set the interest rate has five steps explained below. Please note that the process requires work from the borrow and the program, and there will be a cost associated with the re-execution.

### OFFICIAL BORROWER REQUEST

Borrowers must submit a brief interest rate reduction request in writing to [WIFIA\\_portfolio@epa.gov](mailto:WIFIA_portfolio@epa.gov) that addresses the following items:

- Demonstrated ability to obtain a better rate from alternative sources in the market on debt comparable to the terms of the WIFIA loan and of equal lien priority. (Note: Federal and state (e.g., SRF) lending programs do not generally charge market rates and cannot be used as benchmark for comparison)
- Explanation of how the alternative funding would translate to significant savings and quantification of the savings.
- Explanation on how the lower interest rate would bring positive impact. That is, what are the expected benefits to the project, system, ratepayers, community, public health, and/or the environment from re-executing your WIFIA loan beyond monetary savings.
- Documentation showing that the project is in pre-construction or under construction and that the value of the eligible project costs remaining to date is more than the WIFIA loan % share of the total eligible project cost. In other words, the value of the eligible project costs remaining must be equal or greater than the loan amount. (Note: The most recently provided Construction Progress Report should generally be sufficient to satisfy this requirement)
- Documentation showing that the loan amount at the time of re-execution will still be no more 49% of eligible project costs. (Note: The most recently provided Construction Progress Report should generally be sufficient to satisfy this requirement)

## **WIFIA ASSESSMENT**

The WIFIA program will review the documentation submitted to verify that the conditions for consideration are met.

## **LEGAL DUE DILIGENCE AND CLOSING CHECKLIST**

The program, with external counsel support, will make the necessary changes to the loan agreement and ensure that all required certifications, opinions, rating letter, resolutions, bond/note, and other supporting documents are valid and obtain new documents whenever necessary. Prior to re-executing the loan agreement, the parties will also complete a new closing checklist, verify that conditions precedent to closing are satisfied, and prepare a new closing set.

## **LOAN AGREEMENT RE-EXECUTION**

A new loan agreement will be signed by EPA and the Borrower, setting a new interest rate.

## **BORROWER PAYMENT OF FEES**

The program will require a credit processing fee at the time of the new closing to pay for EPA's cost to re-execute the loan, including retaining the assistance of expert firms (e.g., legal support). The credit processing fee will be set based on the costs incurred by EPA for that specific transaction. We anticipate that the fee will be no more than \$150,000 but it will depend on the complexity of the loan agreement and changes that have occurred since the original loan closed. There will also be a new Set-Up Fee associated with the re-executed loan.



**Office of Wastewater Management**  
**WIFIA Management Division**  
**Washington, DC 20004**