

The Administrator, Andrew R. Wheeler, signed the following Notice of Funding Availability (NOFA) on July 13, 2020, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the NOFA, it is not the official version. Please refer to the official version in a forthcoming FR publication (<https://www.federalregister.gov/>). Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10012-15-OW]

40 CFR Part 35

Notice of Funding Availability for Applications for Credit Assistance under the State Infrastructure Finance Authority Water Infrastructure Finance and Innovation Act (SWIFIA) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: In the Further Consolidated Appropriations Act, 2020, signed by the President on December 20, 2019, Congress provided \$5 million in budget authority solely for the cost of direct loans or guaranteed loans to State infrastructure financing authority borrowers for projects described in section 5026(9) of the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA). The State infrastructure financing authority WIFIA (SWIFIA) program will use this amount to cover the subsidy required to provide a much larger amount of credit assistance.

Environmental Protection Agency (EPA or the Agency) estimates that this budget authority may provide approximately \$1 billion in credit assistance and may finance approximately \$2 billion in water infrastructure investment. The purpose of this notice of funding availability (NOFA) is to solicit letters of interest (LOIs) from prospective State Infrastructure Financing Authority borrowers seeking credit assistance from EPA under the SWIFIA program.

EPA will evaluate and select proposed projects described in the LOIs using the selection criteria established in the statute, and further described in this NOFA as well as the WIFIA program handbook. This NOFA introduces new budgetary scoring factors to determine budgetary scoring compliance and outlines the process that prospective borrowers should follow to be considered for SWIFIA credit assistance.

In addition, EPA reserves the right to make additional awards under this announcement, consistent with Agency policy and guidance, if additional funding is available after the original selections are made.

DATES: The LOI submittal period will begin on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and end at 11:59 pm EDT on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Prospective borrowers should submit all LOIs electronically via email at: wifia@epa.gov or via EPA's SharePoint site. To be granted access to the SharePoint site, prospective borrowers should contact wifia@epa.gov and request a link to the SharePoint site, where they can securely upload their LOIs. Requests to upload documents should be made no

later than 5:00 pm EDT on **[INSERT DATE 56 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

EPA will notify prospective borrowers that their LOI has been received via a confirmation email.

Prospective borrowers can access additional information, including the WIFIA program handbook and application materials, on the WIFIA website: <https://www.epa.gov/wifia/>.

SUPPLEMENTARY INFORMATION:

For a project to be considered during a selection round, EPA must receive a LOI, via email or SharePoint, before the corresponding deadline listed above. EPA is only able to accept e-mails of 25 MB or smaller with unzipped attachments (EPA cannot accept zipped files). If necessary due to size restrictions, prospective borrowers may submit attachments separately, as long as they are received by the deadline.

When writing a LOI, prospective borrowers are encouraged to fill out the SWIFIA LOI form and follow the guidelines contained on the WIFIA program website: <https://www.epa.gov/wifia/wifia-application-materials>. Prospective borrowers should provide the LOI and any attachments as Microsoft Word documents or searchable PDF files, whenever possible, to facilitate EPA's review. Section VI of this NOFA provides additional details on the LOI's content.

EPA will invite each prospective borrower whose project proposal is selected for continuation in the process to submit a final application. Final applications should be received by EPA within 365 days of the invitation to apply.

EPA will host a webinar to provide State infrastructure finance authority prospective borrowers further information about the SWIFIA loans and how to submit a LOI. The webinar date and registration directions can be found on the WIFIA program website:

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

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

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I. Background

Congress enacted WIFIA as part of the Water Resources Reform and Development Act of 2014 (WRRDA). Codified at 33 U.S.C. 3901-3914, WIFIA authorizes a federal credit program for water infrastructure projects to be administered by EPA. WIFIA authorizes EPA to provide federal credit assistance in the form of secured (direct) loans or loan guarantees for eligible water infrastructure projects.

Congress amended WIFIA in America's Water Infrastructure Act of 2018 (AWIA) to authorize federal credit assistance exclusively for State infrastructure financing authority borrowers.

The WIFIA program's mission is to accelerate investment in our nation's water and wastewater infrastructure by providing long-term, low-cost, supplemental credit assistance under customized terms to creditworthy drinking water and wastewater infrastructure projects of national and regional significance.

II. Program Funding

Congress appropriated \$5 million in funding to cover the subsidy cost of providing SWIFIA credit assistance. The subsidy cost covers the Federal government's risk that the loan may not be paid back. EPA anticipates that the average subsidy cost for SWIFIA-funded projects will be relatively low; therefore, this funding can be leveraged into a much larger amount of credit assistance. EPA estimates that this appropriation will allow the Agency to provide

approximately \$1 billion¹ in long-term, low-cost financing to water and wastewater infrastructure projects and accelerate approximately \$2 billion in infrastructure investment around the country.

III. Eligibility Requirements

The WIFIA statute and implementing rules set forth eligibility requirements for prospective borrowers, projects, and project costs. The requirements outlined below are described in greater detail in the WIFIA program handbook.

A. Eligible Applicants

Prospective borrowers must be a State infrastructure financing authority to be eligible for SWIFIA credit assistance. EPA defines State infrastructure financing authority as the 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).

B. Eligible Projects

To be eligible for SWIFIA credit assistance, the SWIFIA project must be a combination of projects, each of which is eligible for assistance under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452(a)(2) of the Safe Drinking Water Act

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

(42 U.S.C. 300j–12(a)(2)), for which a State infrastructure financing authority submits to the Administrator a single application.

C. Eligible Costs

As defined under 33 U.S.C. 3906 and described in the WIFIA program handbook, eligible project costs are costs associated with the following activities:

(i) Development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(ii) Construction, reconstruction, rehabilitation, and replacement activities;

(iii) The acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation (including acquisitions pursuant to 33 U.S.C. 3905(8)), construction contingencies, and acquisition of equipment; and

(iv) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Capitalized interest on WIFIA credit assistance may not be included as an eligible project cost.

D. Threshold Requirements

For a project to be considered for SWIFIA credit assistance, a SWIFIA project or a group of projects consolidated by the State Infrastructure Financing Authority must meet the following four criteria:

- (i) The project and obligor shall be creditworthy;
- (ii) A project shall have eligible project costs that are reasonably anticipated to equal or exceed \$20 million;
- (iii) Project financing shall be repayable, in whole or in part, from state or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the project; shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and may have a lien on revenues subject to any lien securing project obligations;
- (iv) The project shall have an operations and maintenance plan that identifies adequate revenues to operate, maintain, and repair the project during its useful life.

E. Federal Requirements

All projects receiving SWIFIA assistance must comply, if applicable, with federal requirements and regulations, including (but not limited to):

- (i) American Iron and Steel Requirement, 33 U.S.C. 3914,
<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>;
- (ii) Labor Standards, 33 U.S.C. 1372,
<https://www.dol.gov/whd/govcontracts/dbra.htm>;

(iii) National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.,
<https://www.epa.gov/nepa>;

(iv) Floodplain Management, Executive Order 11988, 42 FR 26951, May 24, 1977,
<https://www.archives.gov/federal-register/codification/executive-order/11988.html>;

(v) Archeological and Historic Preservation Act, 16 U.S.C. 469-469c,
<https://www.nps.gov/archeology/tools/laws/ahpa.htm>;

(vi) Clean Air Act, 42 U.S.C. 7401 et seq., <https://www.epa.gov/clean-air-act-overview>;

(vii) Clean Water Act, 33 U.S.C. 1251 et seq., <https://www.epa.gov/aboutepa/about-office-water>;

(viii) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.,
<https://www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html>;

(ix) Coastal Zone Management Act, 16 U.S.C. 1451 et seq.,
<https://coast.noaa.gov/czm/about/>;

(x) Endangered Species Act, 16 U.S.C. 1531 et seq.,
<https://www.fws.gov/endangered/>;

(xi) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order 12898, 59 FR 7629, February 16, 1994,
<https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>;

(xii) Protection of Wetlands, Executive Order 11990, 42 FR 26961, May 25, 1977, as amended by Executive Order 12608, 52 FR 34617, September 14, 1987, <https://www.epa.gov/cwa-404>;

(xiii) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq., https://www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275;

(xiv) Fish and Wildlife Coordination Act, 16 U.S.C. 661-666c, as amended, <https://www.fws.gov/>;

(xv) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., <https://www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act>;

(xvi) National Historic Preservation Act, 16 U.S.C. 470 et seq., <https://www.nps.gov/archeology/tools/laws/NHPA.htm>;

(xvii) Safe Drinking Water Act, 42 U.S.C. 300f et seq., <https://www.epa.gov/ground-water-and-drinking-water>;

(xviii) Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq., <https://rivers.gov/>;

(xix) Debarment and Suspension, Executive Order 12549, 51 FR 6370, February 18, 1986, <https://www.archives.gov/federal-register/codification/executive-order/12549.html>;

(xx) Demonstration Cities and Metropolitan Development Act, 42 U.S.C. 3301 et seq., as amended, and Executive Order 12372, 47 FR 30959, July 14, 1982, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning;

(xxii) New Restrictions on Lobbying, 31 U.S.C. 1352,
<https://www.epa.gov/grants/lobbying-and-litigation-information-federal-grants-cooperative-agreements-contracts-and-loans>;

(xxiii) Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under 42 U.S.C. 7606 and 33 U.S.C. 1368, and Executive Order 11738, 38 FR 25161, September 12, 1973, <https://www.archives.gov/federal-register/codification/executive-order/11738.html>;

(xxiv) 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>;

(xxv) Age Discrimination Act, 42 U.S.C. 6101 et seq.,
<https://www.eeoc.gov/laws/statutes/adea.cfm>;

(xxvi) Equal Employment Opportunity, Executive Order 11246, 30 FR 12319, September 28, 1965, https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm;

(xxvii) Section 13 of the Clean Water Act, Pub. L. 92-500, codified in 42 U.S.C. 1251, <https://www.epa.gov/ocr/external-civil-rights-compliance-office-title-vi>;

(xxviii) Section 504 of the Rehabilitation Act, 29 U.S.C. 794, supplemented by Executive Orders 11914, 41 FR 17871, April 29, 1976 and 11250, 30 FR 13003, October 13, 1965, <https://www.epa.gov/ocr/external-civil-rights-compliance-office-title-vi>;

(xxix) 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>; and

(xxx) Participation by Disadvantaged Business Enterprises in Procurement under the Environmental Protection Agency Financial Assistance Agreements, 73 FR 15904, March 26, 2008, <https://www.epa.gov/resources-small-businesses>.

Detailed information about some of these requirements is outlined in the WIFIA program handbook. Further information can be found at the links above.

IV. Fiscal Year 2020 Office of Management and Budget Budgetary Scoring Determination

In order to comply with Public Law 116-94, a project selected for WIFIA financing using funding appropriated in FY 2020 will be assessed using two initial screening questions and sixteen scoring factors. These questions will help the Office of Management and Budget (OMB) determine compliance with budgetary scoring rules, a process that will be conducted in parallel to EPA's LOI evaluation process outlined in this NOFA. 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]. These questions are also published in the WIFIA program handbook and further information about the scoring process may be referenced therein. EPA encourages project applicants to review the scoring criteria and provide sufficient information in the LOI or as an attachment to the LOI to facilitate EPA and OMB review of the prospective project in light of the scoring criteria. EPA may contact prospective borrowers after the LOI is submitted if clarification is needed to answer the budgetary scoring determination questions.

V. Types of Credit Assistance

Under SWIFIA, EPA is offering senior, parity loans. The maximum amount of SWIFIA credit assistance to a State infrastructure financing authority is 49 percent of estimated eligible total costs of the SRF loans that are included in the SWIFIA project. Prospective SWIFIA borrowers may request one the following loan structures:

- (i) EPA accepts the State infrastructure financing authority's existing indenture; or
- (ii) The State infrastructure financing authority accepts EPA's standard terms. More information on EPA's standard terms is available at www.epa.gov/wifia.

SWIFIA credit assistance is available for SRF projects which are ready to proceed. EPA considers an SRF project ready to proceed if its construction will commence no later than 18 months after the LOI deadline.

VI. Letters of Interest and Applications

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

A. Letter of Interest (LOI)

Prospective borrowers seeking a SWIFIA loan must submit a LOI describing the project fundamentals and addressing the SWIFIA selection criteria.

The primary purpose of the LOI is to provide adequate information to EPA to validate the eligibility and creditworthiness of the prospective borrower and the prospective project and determine the extent to which the SWIFIA project meets the statutory selection criteria. Based on its review of the information provided in the LOI, EPA will invite prospective borrowers to submit applications for their projects.

Prospective borrowers are encouraged to utilize the LOI form on the WIFIA website and ensure that sufficient detail about the project is provided for EPA's review. EPA will notify a prospective borrower if its project is deemed ineligible as described in Section III of this NOFA.

Below is guidance on what EPA recommends be included in the LOI.

- A. **Loan Information:** The prospective borrower provides information about its legal name, business address, program website, employer/taxpayer identification number, Dun and Bradstreet Data Universal Number System number, requested SWIFIA loan amount and SWIFIA project amount, type of SRF loans (clean water, drinking water, or both), and requested loan structure.
- B. **Supporting Documents:** The prospective borrower provides the most recent version of the following documents: Intended Use Plan (IUP), SRF Operating Agreements with EPA Regional Office, documentation of the priority setting system, and bond indenture (if applicable).
- C. **Contact Information:** The prospective borrower identifies the points of contact with whom the WIFIA program should communicate regarding the LOI. To complete EPA's evaluation, the WIFIA program staff may contact a prospective borrower regarding specific information in the LOI.

D. Certifications. The prospective borrower certifies that it will abide by all applicable laws and regulations, if selected to receive funding.

B. Application

After EPA concludes its evaluation of the LOIs, a selection committee will invite prospective borrowers to apply. EPA expects that all eligible State infrastructure financing authority prospective borrowers will be invited to apply for a SWIFIA loan. If the amount requested by prospective borrowers exceeds the amount available from EPA, each eligible State infrastructure financing authority prospective borrowers will be invited for a pro rata share, based on the financing request outlined in their LOIs. If a prospective borrower declines EPA's invitation, EPA would re-allocate to other eligible prospective borrowers to the extent practicable or carry the funding forward to a future round.

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 the Agency, and the availability of funds at the time at which all necessary recommendations and evaluations have been completed. However, the purpose of EPA's LOI review is to pre-screen prospective borrowers to the extent practicable. It is expected that EPA will only invite prospective borrowers to apply if it anticipates that those prospective borrowers are able to obtain WIFIA credit assistance. Detailed information needs for the application are listed in the application form and described in the WIFIA program handbook.

VII. Fees

There is no fee to submit a LOI. The final fee rule, Fees for Water Infrastructure Project Applications under WIFIA, 40 CFR 35.10080, was signed by EPA on June 19, 2017, and establishes the fees related to the provision of federal credit assistance under WIFIA. Each invited applicant must submit, concurrent with its application, a non-refundable Application Fee of \$100,000. Applications will not be evaluated until the Application Fee is paid. For successful applicants, this fee will be credited toward final payment of a Credit Processing Fee, assessed following financial close, to reimburse EPA for actual engineering, financial, and legal costs. In the event a final credit agreement is not executed, the borrower is still required to reimburse EPA for the costs incurred. Borrowers may finance these fees with WIFIA credit assistance.

VIII. Selection Criteria

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

The selection criteria described are the statutory selection criteria for State infrastructure finance authority borrowers. EPA has also identified readiness to proceed as a priority for this LOI submittal period. In order to ensure the efficient use of limited federal resources for infrastructure finance, the readiness of the SRF loans included in the SWIFIA project to proceed toward development, including loan closing and the commencement of construction, is an Agency priority.

Following its eligibility determination, EPA will determine the extent to which the SWIFIA project meets the statutory selection criteria. They are as follows:

(i) 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 CFR 35.10055(a)(10).

(ii) 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 CFR 35.10055(a)(2).

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

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

(v) 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 CFR 35.10055(a)(4); 40 CFR 35.10055(a)(5).

(vi) 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 CFR 35.10055(a)(6).

(vii) 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 CFR 35.10055(a)(7).

(viii) The extent to which the project addresses identified municipal, state, or regional priorities. 33 U.S.C. 3907(b)(2)(I); 40 CFR 35.10055(a)(8).

(ix) 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 CFR 35.10055(a)(9).

(x) 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 CFR 35.10055(a)(11).

Authority: 33 U.S.C. 3901-3914; 40 CFR part 35.

Andrew Wheeler,

Administrator.