

(11) Supplemental counseling services, not to include psychiatric or medical services; or

(12) Other education-related services that are reasonable and necessary for the project;

(c) Provide a method to enable parents and students to select services. Such a method must—

(1) Ensure that funds will be transferred directly from the grantee to the selected service provider; and

(2) Include service providers other than the applicant, although the applicant may be one of the service providers;

(d) Include a parent involvement and feedback process that—

(1) Describes a way for parents to request services or providers that are not currently offered and provide input on services provided through the project, and describes how the grantee will provide parents with written responses within 30 days; and

(2) May include a parent liaison to support the grantee in outreach to parents, inform parents and students of the timeline for the termination of the project, and assist parents and the grantee with the process by which a parent can request services or providers not already specified by the grantee;

(e) Include a written agreement between the grantee and each service provider under the project. Each agreement must include—

(1) A nondiscrimination clause that—

(i) Requires the provider to abide by all applicable non-discrimination laws with regard to students to be served, *e.g.*, on the basis of race, color, national origin, religion, sex, or disability; and

(ii) Prohibits the provider from discriminating among students who are eligible for services under this program, *i.e.*, that meet the definition of “Indian” in section 6151 of the ESEA, on the basis of affiliation with a particular Tribe;

(2) A description of how the grantee will oversee the service provider and hold the provider accountable for—

(i) The terms of the written agreement; and

(ii) The use of funds, including compliance with generally accepted accounting procedures and Federal cost principles;

(3) A description of how students’ progress will be measured; and

(4) A provision for the termination of the agreement if the provider is unable to meet the terms of the agreement;

(f) Include a fair and documented process to choose students to be served, such as a lottery or other transparent criteria (*e.g.*, based on particular types of need), in the event that the number

of requests from parents of eligible students or from students for services under the project exceeds the available capacity, with regard to the number or intensity of services offered;

(g) Ensure that—

(1) At least 80 percent of grant funds are used for direct services to eligible students, provided that, if a grantee requests and receives approval for a planning period, not to exceed 12 months, the 80 percent requirement does not apply to that planning period;

(2) Not more than 15 percent of grant funds are used on the service selection method described in paragraph (d) of this section or the parent involvement and feedback process described in paragraph (e) of this section, except in an authorized planning period; and

(3) No grant funds are used to establish or develop the capacity of entities or individuals that are or may become service providers under this project;

(h) For a grantee that receives approval for a planning period, not to exceed 12 months, submit to the Department prior to the end of that period the following documents:

(1) A description of the operational service selection process that meets the requirements of paragraph (c) of this section.

(2) A description of the operational parent involvement and feedback process that meets the requirements of paragraph (d) of this section.

(3) A sample of the written agreement that meets the requirements of paragraph (e) of this section, and a list of providers with whom the grantee has signed written agreements.

(4) A description of the process that will be used to choose students to be served in the event that the demand for services exceeds the available capacity, as described in paragraph (f) of this section.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL 10012–16–OW]

40 CFR Part 35

Notice of Funding Availability for Applications for Credit Assistance Under the Water Infrastructure Finance and Innovation Act (WIFIA) 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 \$50 million in budget authority for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) program to cover the subsidy required to provide a much larger amount of credit assistance. The Environmental Protection Agency (EPA or the Agency) estimates that this budget authority may provide approximately \$5 billion in credit assistance and may finance approximately \$10 billion in water infrastructure investment, while covering increased costs associated with implementing a larger program. The purpose of this notice of funding availability (NOFA) is to solicit letters of interest (LOIs) from prospective borrowers seeking credit assistance from EPA.

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

In addition, EPA reserves the right to make additional awards using FY 2020 appropriated funding or available carry-over resources, consistent with Agency policy and guidance, if additional funding is available after the original selections are made. This could include holding a subsequent selection round.

DATES: The LOI submittal period will begin on July 17, 2020 and end at 11:59 p.m. EDT on October 15, 2020.

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 p.m. EDT on October 13, 2020.

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 emails 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 WIFIA 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. Additionally, prospective borrowers should ensure that financial information, including the pro forma financial statement, is in a formula-based Microsoft Excel document. 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 but EPA may extend the deadline on a case-by-case basis if the LOI schedule signals additional time may be needed.

EPA will host a series of webinars to provide further information about submitting a LOI. The webinar schedule and registration instructions can be found on the WIFIA program website: www.epa.gov/wifia.

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

Table of Contents

- I. Background
- II. Program Funding
- III. Eligibility Requirements
- IV. Fiscal Year 2020 Office of Management and Budget Budgetary Scoring Determination
- V. Types of Credit Assistance
- VI. Letters of Interest and Applications
- VII. Fees
- VIII. Selection Criteria

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.

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 water infrastructure projects of national and regional significance.

II. Program Funding

Congress appropriated \$50 million in funding to cover the subsidy cost of providing WIFIA 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 WIFIA-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 \$5 billion¹ in long-term, low-cost financing to water and wastewater infrastructure projects and accelerate approximately \$10 billion in infrastructure investment around the country.

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

In addition to assisting both large and small projects and communities, WIFIA may be an attractive borrowing mechanism for a variety of different borrower and credit types. EPA anticipates that municipalities, private entities, project financings, State Revolving Fund programs, and tribes will benefit from the low cost and debt

structuring flexibilities that the WIFIA loans can offer.

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 one of the following in order to be eligible for WIFIA credit assistance:

- (i) A corporation;
- (ii) A partnership;
- (iii) A joint venture;
- (iv) A trust;
- (v) A federal, state, or local governmental entity, agency, or instrumentality;
- (vi) A tribal government or a consortium of tribal governments; or
- (vii) A state infrastructure financing authority.

B. Eligible Projects

The WIFIA statute authorizes EPA to provide credit assistance for a wide variety of projects. Projects must be one of the following in order to be eligible for WIFIA credit assistance:

- (i) One or more activities that are eligible for assistance under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)), notwithstanding the public ownership requirement under paragraph (1) of that subsection;
- (ii) One or more activities described in section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2));
- (iii) A project for enhanced energy efficiency in the operation of a public water system or a publicly owned treatment works;
- (iv) A project for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or waste collection facility (including a facility that serves a population or community of an Indian reservation);
- (v) 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;
- (vi) A project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds;
- (vii) Acquisition of real property or an interest in real property—

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.

(a) If the acquisition is integral to a project described in paragraphs (i) through (v); or

(b) Pursuant to an existing plan that, in the judgment of the Administrator, would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for assistance under this section;

(viii) A combination of projects, each of which is eligible under paragraph (i) or (ii), for which a state infrastructure financing authority submits to the Administrator a single application; or

(ix) A combination of projects secured by a common security pledge, each of which is eligible under paragraph (i), (ii), (iii), (iv), (v), (vi), or (vii), for which an eligible entity, or a combination of eligible entities, submits 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 WIFIA credit assistance, a project must meet the following five 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, or for a project eligible under paragraphs (2) or (3) of 33 U.S.C. 3905 serving a community of not more than 25,000 individuals, project costs that are

reasonably anticipated to equal or exceed \$5 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) 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 shall be publicly sponsored; and

(v) The applicant shall have developed 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 WIFIA 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 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 WIFIA, EPA is permitted to provide credit assistance in the form of secured (direct) loans or loan guarantees. The maximum amount of WIFIA credit assistance to a project is 49 percent of eligible project costs. Each prospective borrower should list the estimated total capital costs of the project, broken down by activity type and differentiating between eligible project costs and ineligible project costs in the LOI and application.

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

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

The primary purpose of the LOI is to provide adequate information to EPA to: (i) Validate the eligibility of the prospective borrower and the prospective project, (ii) perform a preliminary creditworthiness assessment, (iii) perform a preliminary engineering feasibility assessment, and (iv) evaluate the project against the selection criteria. Based on its review of the information provided in the LOI, EPA will invite prospective borrowers to submit applications for their projects. Prospective borrowers are encouraged to review the WIFIA program handbook to help create the best justification possible for the project and a cohesive and comprehensive LOI submittal.

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. *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, Dun and Bradstreet Data Universal Number System (DUNS) number, 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 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 and Credit.* In this section, the prospective borrower provides any technical reports or written information relevant to evaluating the project and a high-level schedule of dates for the project or projects included in the LOI. To evaluate creditworthiness, the prospective borrower will provide a credit rating letter that is less than a year old or is actively maintained. If the prospective borrower does not have a current rating letter, the borrower should describe how the senior obligations of the project will achieve an investment-grade rating and provide a pro-forma and three years of audited financial statements.

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 Section VIII of this NOFA and further explained in the WIFIA program handbook.

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 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, if selected to receive funding.

F. SRF Notification. In this section, the prospective borrower acknowledges that 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.

B. Application

After EPA concludes its evaluation of the LOIs, a selection committee will invite prospective borrowers to apply based on the scoring of the selection criteria, while taking into consideration geographic and project diversity. The selection committee may choose to combine multiple LOIs or separate projects from a prospective borrower based on the creditworthiness review and may offer an alternative amount of WIFIA assistance than requested in the LOI.

An invitation to apply for WIFIA credit assistance does not guarantee EPA's approval, which remains subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to EPA, and the availability of funds at the time at which all necessary recommendations and evaluations have been completed. However, the purpose of EPA's LOI review is to pre-screen prospective borrowers to the extent practicable. It is expected that EPA will only invite projects to apply if it anticipates that those projects 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 \$25,000 for projects serving communities of not more than 25,000 individuals or \$100,000 for all other projects. 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 WIFIA assistance.

The selection criteria described below incorporate statutory eligibility requirements, supplemented by the WIFIA regulations at 40 CFR 35.10055. EPA has also identified the following strategic objectives as priorities for this LOI submittal period:

(i) *Readiness to proceed*: In order to ensure the efficient use of limited federal resources for infrastructure finance, a project's readiness to proceed toward development, including loan closing and the commencement of construction, is an Agency priority.

(ii) *Provide for clean and safe drinking water*: EPA is working to strengthen its implementation of the Safe Drinking Water Act to ensure we protect and build upon the enormous public health benefits achieved through the provision of safe drinking water throughout the country. One of the Agency's highest priorities include reducing exposure to lead and addressing emerging contaminants, including per- and polyfluoroalkyl substances (PFAS), in the nation's drinking water systems.

(iii) *Repair, rehabilitate, and replace aging infrastructure and conveyance systems*: Many communities face formidable challenges in providing adequate and reliable water and wastewater infrastructure services. Existing water and wastewater infrastructure in some of these communities is aging, and investment is not always keeping up with the needs. EPA estimates the national funding need for capital improvements for such facilities totals approximately \$740 billion over the next 20 years. In many cases, meeting these needs will require significant increases in capital investment.

(iv) *Water reuse and recycling*: EPA is highlighting water reuse and recycling as a new or innovative approach. EPA recognizes that reuse and recycling of water can play a critical role in helping states, tribes, and communities meet their future drinking water needs with a diversified portfolio of water sources. The practice can alleviate the effects of drought and assure groundwater resource sustainability and a secure water supply.

EPA's priorities reflect water sector challenges that require innovative tools to assist municipalities in managing and adapting to our most pressing public health and environmental challenges. These priorities are reflected in the scoring methodology of the selection criteria below, described in greater detail in the WIFIA program handbook.

The WIFIA selection criteria are divided into three categories that represent critical considerations for selecting projects: Project Impact, Project Readiness, and Borrower Creditworthiness. Each criterion within a category can provide a range of points with the maximum number of points indicated. Each category can provide up to 100 points out of a total of 300 available points, and the category-specific and overall scores will help inform the selection committee's deliberations within the overall WIFIA framework. For the Project Readiness and Borrower Creditworthiness categories, criteria scores are supplemented by points awarded from the preliminary engineering feasibility analysis and preliminary creditworthiness assessment, respectively, described in the WIFIA program handbook. In order to reflect EPA's priorities and give greater consideration to a class of projects that reduce exposure to lead and address emerging contaminants, including PFAS, in the nation's drinking water systems, EPA has added a criterion (ix) to the Project Impact category of criteria in accordance with 40 CFR 35.10055(b). The criteria are as follows:

Project Impact

(i) *15 points*: The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public benefits, such as (1) the reduction of flood risk; (2) the improvement of water quality and quantity, including aquifer recharge; (3) the protection of drinking water, including source water protection; and (4) the support of international commerce. 33 U.S.C. 3907(b)(2)(A); 40 CFR 35.10055(a)(1).

(ii) *5 points*: 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).

(iii) *5 points*: 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).

(iv) *10 points*: The extent to which a project serves regions with significant

water resource challenges, including the need to address: (1) Water quality concerns in areas of regional, national, or international significance; (2) water quantity concerns related to groundwater, surface water, or other water sources; (3) significant flood risk; (4) water resource challenges identified in existing regional, state, or multistate agreements; or (5) water resources with exceptional recreational value or ecological importance. 33 U.S.C. 3907(b)(2)(H); 40 CFR 35.10055(a)(7).

(v) *10 points*: 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).

(vi) *25 points*: The extent to which the project addresses needs for repair, rehabilitation or replacement of a treatment works, community water system, or aging water distribution or wastewater collection system. 40 CFR 35.10055(a)(12).

(vii) *10 points*: The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities. 40 CFR 35.10055(a)(13).

(viii) *20 points*: The extent to which the project reduces exposure to lead in the nation's drinking water systems or addresses emergent contaminants. 40 CFR 35.10055(b).

Project Readiness

(i) *50 points*: 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).

(ii) *30 points*: Preliminary engineering feasibility analysis score. 33 U.S.C. 3907(a)(2); 33 U.S.C. 3907(a)(6); 40 CFR 35.10015(c); 40 CFR 35.10045(a).

(iii) *20 points*: 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).

Borrower Creditworthiness

(i) *10 points*: 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).

(ii) *10 points*: 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).

(iii) *10 points*: 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).

(iv) *10 points*: 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) *60 points*: Preliminary creditworthiness assessment score. 33 U.S.C. 3907(a)(1); 40 CFR 35.10015(c); 40 CFR 35.10045(a)(1); 40 CFR 35.10045(a)(4); 40 CFR 35.10045(b).

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.”

Following analysis by the WIFIA program staff, a final score is calculated for each project. Projects will be selected in order of score, subject to the requirement to ensure a diversity of project types and geographical locations. To ensure diversity, EPA will establish a ceiling for each project type and geographical location. EPA will select projects in rank order up until the point that the ceiling is reached. Thereafter, the next highest project that adds diversity will be selected.

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

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

Andrew Wheeler,
Administrator.

[FR Doc. 2020–15470 Filed 7–16–20; 8:45 am]

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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 July 17, 2020 and end at 11:59 p.m. EDT on September 15, 2020.

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 p.m. EDT on September 11, 2020.

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