

Broadcast Notice to Mariners on the day of the event.

*Spectator vessel* means any vessel or person, including human-powered craft, which is not designated by the sponsor as a support vessel.

*Support vessel* means a vessel, including jet skis, which is designated and conspicuously marked by the sponsor to provide direct support to the competitors. Support vessels must be pre-designated and approved to serve as such for this event by the Officer in Charge, Marine Inspection (OCMI) prior to the competition.

*Zone 1* means the competition area within the regulated area. Zone 1 will generally be located to the northwest of a line drawn between Sail Rock (37°29'34" N., 122°30'02" W.) and 37°29'10.410" N., 122°30'21.904" W.

*Zone 2* means the area within the regulated area where the Coast Guard may direct the movement of all vessels, including restricting vessels from this area. Zone 2 will generally be located to the southeast of a line drawn between Sail Rock (37°29'34" N., 122°30'02" W.) and 37°29'10.410" N., 122°30'21.904" W.

(d) *Special local regulations.* The following regulations apply between 6 a.m. and 6 p.m. on the competition day.

(1) Only support vessels may be authorized by the Patrol Commander (PATCOM) to enter Zone 1 during the competition.

(2) Entering the water in Zone 1 by any person other than the competitors is prohibited. Competitors may enter the water in Zone 1 from authorized support vessels only.

(3) Spectator vessels and support vessels within Zone 2 must maneuver as directed by PATCOM. Given the changing nature of the surf in the vicinity of the competition, PATCOM may close Zone 2 to all vessels due to hazardous conditions. Due to weather and sea conditions, the Captain of the Port may deny access to Zone 2 and the remainder of the regulated area to all vessels other than competitors and support vessels on the day of the event

(4) Entering the water in Zone 2 by any person is prohibited.

(5) Rafting and anchoring of vessels are prohibited within the regulated area.

(6) Only vessels authorized by the PATCOM will be permitted to tow other watercraft within the regulated area.

(7) Spectator and support vessels in Zones 1 and 2 must operate at speeds which will create minimum wake, in general, 7 miles per hour or less.

(8) If granted permission to enter the regulated area, when hailed or signaled by the PATCOM by a succession of sharp, short signals by whistle or horn, the hailed vessel must come to an

immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(9) During the events, vessel operators may contact the PATCOM on VHF-FM channel 16.

Dated: December 13, 2016.

**Anthony J. Ceraolo,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL 9957-79-OW]

### 40 CFR Part 35

#### Notice of Funding Availability (NOFA) 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 Continuing and Security Assistance Appropriations Act, 2017, signed by the President on December 10, 2016, Congress provided \$20 million in budget authority for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) program. This funding covers the Federal government's anticipated cost of providing a much larger amount of credit assistance. Environmental Protection Agency (EPA) estimates that current budget authority may provide more than \$1 billion in credit assistance and may finance over \$2 billion in water infrastructure investment. 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 regulation at 40 CFR 35.10055,<sup>1</sup> 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 and outlines the process that applicants must follow to be considered for WIFIA credit assistance.

<sup>1</sup> 81 FR 91822, <https://www.federalregister.gov/documents/2016/12/19/2016-30194/credit-assistance-for-water-infrastructure-projects>

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:** EPA will collect LOIs in two selection rounds in FY 2017. The first LOI submittal period will begin on January 10, 2017, and end at midnight in the time zone of the prospective borrower on April 10, 2017. The second LOI submittal period, if needed, will begin on August 1, 2017 and end at midnight in the time zone of the prospective borrower on September 29, 2017.

**ADDRESSES:** Prospective borrowers should submit all LOIs electronically via email at: [wifia@epa.gov](mailto:wifia@epa.gov). Prospective borrowers will receive a confirmation email and are advised to request a return receipt to confirm transmission. Only LOIs received by email, as provided above, shall be considered for funding.

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

**SUPPLEMENTARY INFORMATION:** In the first selection round, EPA will make available the full \$17 million of budget authority appropriated for the WIFIA program to provide credit assistance. This \$17 million in Federal funding can help finance total project costs of more than \$2 billion. If funding remains after the first selection round, EPA will hold a second round. The second LOI submittal period, if needed, will begin on August 1, 2017 and end at midnight in the time zone of the prospective borrower on September 29, 2017. Late proposals will not be considered for funding.

EPA will announce the amount available in the second selection round through a notice in the **Federal Register**, as well as on EPA's WIFIA program Web site. In the event that EPA changes the application or selection process to incorporate best practices from the initial round, a new NOFA will be published.

For a project to be considered during a selection round, EPA must receive a complete LOI electronically via email before the corresponding deadline listed above. EPA is only able to accept emails of 25 MB or smaller with unzipped attachments. 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 must also fill out the form

and follow the guidelines contained on the WIFIA program Web site: <https://www.epa.gov/wifia/>. Prospective borrowers should provide the LOI and any attachments as 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 whenever possible. Section V of this NOFA provides additional details on the contents of the LOIs.

EPA will invite final applications from prospective borrowers whose project proposals are selected for continuation in the application process. EPA must receive final applications within 365 days of the invitation to apply. If EPA does not receive an application within this timeframe, it is considered withdrawn and the prospective borrower will need to resubmit a LOI to be considered in any subsequent rounds of project selection.

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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, as amended by sec. 5008 of the Water Infrastructure Improvements for the Nation (WIIN) Act, signed into law by the President on December 16, 2016, WIFIA establishes a new 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 drinking water and wastewater infrastructure projects of national and regional significance.

### II. Program Funding

Congress appropriated \$20 million in funding to cover the subsidy cost of providing WIFIA credit assistance. The subsidy cost represents the Federal government's risk that the loan may not be paid back, and since EPA anticipates that on average for the water industry,

the risk is relatively low, this funding can be leveraged into a much larger amount of credit assistance. EPA estimates that this appropriation will allow it to provide approximately \$1 billion<sup>2</sup> in long-term, low-cost financing to water and wastewater projects and accelerate more than \$2 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 WIFIA that EPA set aside 15% 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% of its budget authority for small communities.

In addition to assisting both large and small projects and communities, WIFIA will be an attractive borrowing mechanism for a variety of different borrower and credit types. EPA anticipates that WIFIA's low cost combined with the debt structuring flexibilities offered by the program will be of benefit to municipalities, private entities, project financings, and to the State Revolving Fund programs.

### 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.

<sup>2</sup> 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.

#### 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 project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds;

(vi) Acquisition of real property or an interest in real property—

(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;

(vii) 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

(viii) A combination of projects secured by a common security pledge, each of which is eligible under paragraph (i), (ii), (iii), (iv), (v), or (vi), 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:

(j) 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 section 5026(7) of the statute), 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

In order for a project to be considered for WIFIA credit assistance, a project must meet the following six 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.

(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 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, as amended by Executive Order 13690, 80 FR 6425, February 4, 2015, <https://www.archives.gov/federal-register/codification/executive-order/11988.html>, <https://www.whitehouse.gov/the-press-office/2015/01/30/executive-order-establishing-federal-flood-risk-management-standard-and-https://www.fema.gov/media-library/assets/documents/110377>;

(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](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.*, [http://www.nmfs.noaa.gov/sfa/laws\\_policies/msa/](http://www.nmfs.noaa.gov/sfa/laws_policies/msa/);

(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, <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, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning);

(xxi) Drug-Free Workplace Act, 41 U.S.C. 8101 *et seq.*, <https://webapps.dol.gov/elaws/asp/drugfree/screen4.htm>;

(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](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/section-13-federal-water-pollution-control-act-amendments-1972>;

(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/section-504-rehabilitation-act-1973>;

(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>;

(xxx) Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements, 73 FR 15904, <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. 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 will 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.

#### V. 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

Applicants 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 and identify which projects EPA will invite to submit applications. 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 applicants should utilize the LOI form on the WIFIA Web site and ensure that sufficient detail about the project is provided for EPA's review. EPA will notify a prospective applicant if a project is deemed ineligible as

described in Section III of this NOFA and based on the information provided in the LOI.

Below is guidance on what should be included in the LOI.

A. *Prospective Borrower Information.* In this section, the prospective borrower describes its project's organizational structure, financial condition and experience, and project's readiness to proceed. Also, the prospective borrower provides basic information such as its address, Web site, Dun and Bradstreet Data Universal Number System (DUNS) number, and employer/taxpayer identification number numbers. As part of the description of its financial condition, the prospective borrower should include the year-end audited financial statements for the past three years, as available.

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 recipient can demonstrate, to the satisfaction of the EPA, that the project applicant 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 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. *Project Plan.* The prospective borrower provides a general description of the project, including its location, population served, purpose, design features, estimated capital cost, and development schedule. The prospective borrower describes how the project can be categorized as one of the project types eligible for WIFIA assistance as described in the program handbook. The prospective borrower includes other relevant information that could affect the development of the project, such as community support, pending legislation, or litigation. In this section, the prospective borrower summarizes the status of the project's environmental review, engineering report, and other approvals or analyses that are integral to the project's development.

C. *Project Operations and Maintenance Plan.* The prospective borrower describes its plan for operating, maintaining, and repairing

the project post-completion, discusses the sources of revenue used to finance these activities, and provides an estimate of the useful life of the project.

D. *Financing Plan.* The prospective borrower details the proposed sources and uses of funds for the project and states the type and amount of credit assistance it is seeking from the WIFIA program. The discussion of proposed financing should identify the source(s) of revenue or other security that would be pledged to the WIFIA assistance. Additionally, the prospective borrower describes the credit characteristics of the project and how the senior obligations of the project will achieve an investment-grade rating as well as the anticipated rating on the WIFIA instrument. It also includes a summary financial pro forma as well as revenue and expense projections for the life of the WIFIA debt.

E. *Selection Criteria.* The prospective borrower describes the potential policy benefits achieved through the use of WIFIA assistance with respect to each of the WIFIA program selection criteria. These criteria and their weights are enumerated in Section VII of this NOFA and further explained in the program handbook.

F. *Contact Information.* The prospective borrower identifies the point of contact with whom the WIFIA program should communicate regarding the LOI. For the purpose of completing its evaluation, WIFIA program staff may contact a prospective borrower regarding specific information in the LOI.

G. *Certifications.* The prospective borrower certifies that it will abide by all applicable laws and regulations, including NEPA, the Federal Water Pollution Control Act, the American Iron and Steel requirements, and Federal labor standards, among others if selected to receive funding.

H. *SRF Notification.* 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 the EPA concludes its evaluation of the LOIs, a selection committee will invite prospective borrowers to apply based on preliminary engineering feasibility findings, the preliminary creditworthiness assessment, the amount of budget authority necessary to

provide WIFIA credit assistance, and the scoring of the selection criteria in accordance with Section VII of this NOFA.

Applications must be submitted using the form provided on the WIFIA Web site: <https://www.epa.gov/wifia/>. The purpose of the application is to provide the WIFIA program with the materials necessary to underwrite the loan. Underwriting performed by the WIFIA team will include a thorough evaluation of the project's plan of finance and underlying economics, including a detailed assessment of the project's cash flow and proposed credit terms. The WIFIA team will review the inputs and assumptions in the financing plan, the revenue and expenditures in the financing plan, the project's ability to meet WIFIA loan repayment obligations, and project risks and mitigants, among other things. An application fee may be required, as determined by the final fee rule.

EPA will require a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating, prior to approving a project for credit assistance. To demonstrate this potential, each application must include a preliminary rating opinion letter from a Nationally Recognized Statistical Rating Organization (NRSRO) that addresses the creditworthiness of the senior debt obligations funding the project (*i.e.*, debt obligations which have a lien senior to that of the WIFIA credit instrument on the pledged security) and the default risk of the WIFIA loan. The preliminary rating opinion letter must be based on the financing structure proposed by the prospective borrower, must conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating, and should opine on the default risk of the WIFIA credit assistance itself. If the WIFIA credit assistance is proposed as the senior obligation, then it must receive the investment grade rating. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for a WIFIA loan.

Finally, prior to execution of a WIFIA loan agreement, each prospective borrower must obtain two investment grade ratings on its project's senior debt obligations (which may be the WIFIA credit instrument) and revised opinions on the default risk of the WIFIA loan.

Detailed information requirements for the application are listed in the application form, and are described in the WIFIA program handbook.

## VI. Fees

There is no fee to submit a LOI. EPA has proposed in "Fees for Water Infrastructure Project Applications under WIFIA", found at Docket ID No. EPA-HQ-OW-2016-0568 at <http://www.regulations.gov>, that 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 the 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. Typically, the amount of this credit processing fee is expected to range between \$350,000 and \$700,000, although it can be greater for projects that require complex financial structures and extended negotiations or lower for projects that require simpler financial structures and shorter negotiations.

Borrowers may finance any of the fees described above with WIFIA credit assistance, in accordance with recent amendments to WIFIA found in section 5008 of the Water Infrastructure Improvements for the Nation (WIIN) Act. Borrowers may not finance any other expenses associated with the application process, such as charges associated with obtaining the required preliminary rating opinion letter, with WIFIA credit assistance.

## VII. Selection Process and Criteria

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

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, the initially estimated amount of budget authority consumed by the project, the preliminary creditworthiness assessment, and the preliminary engineering feasibility assessment. In addition, the selection committee will take into consideration geographic and project diversity when identifying which projects should be invited to submit complete applications.

To maintain consistency throughout the evaluation process, the criteria will receive a score on the rating scale of 1–5, 1 being the lowest. Each criterion is

weighted based upon EPA's mission and priorities as well as factors influencing the successful implementation of the WIFIA program. There is no threshold score that must be achieved in order to be selected. Rather, the selection committee will weigh each of the factors outlined above in making final determinations.

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. In doing this, it is expected that EPA will only invite projects to apply if it anticipates that those projects are able to obtain WIFIA credit assistance.

The selection criteria incorporate statutory eligibility requirements as well as EPA priorities. EPA has identified the following project priorities for the LOI submittal period:

(i) Adaptation to extreme weather and climate change including enhanced infrastructure resiliency, water recycling and reuse, and managed aquifer recovery;

(ii) Enhanced energy efficiency of treatment works, public water systems, and conveyance systems, including innovative, energy efficient nutrient treatment;

(iii) Green infrastructure; and

(iv) Repair, rehabilitation, and replacement of infrastructure and conveyance systems.

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 relative weights of the thirteen selection criteria below, described in greater detail in the WIFIA program handbook.

Listed in order of relative weight for this LOI submittal period, the WIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public health benefits: 10 percent.

(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: 5 percent.

(iii) The extent to which the project uses new or innovative approaches such as the use of energy efficient parts and

systems, or the use of renewable or alternate sources of energy; green infrastructure; and the development of alternate sources of drinking water through desalination, aquifer recharge or water recycling: 10 percent.

(iv) The extent to which the project protects against extreme weather events, such as floods or hurricanes, as well as the impacts of climate change: 10 percent.

(v) The extent to which the project helps maintain or protect the environment or public health: 10 percent.

(vi) The extent to which the project serves regions with significant energy exploration, development, or production areas: 5 percent.

(vii) The extent to which the project serves regions with significant water resource challenges, including the need to address water quality concerns related to groundwater, surface water, or other resources, significant flood risk, water resource challenges identified in existing regional, state, or multistate agreements, and water resources with exceptional recreational value or ecological importance: 10 percent.

(viii) The extent to which the project addresses identified municipal, state, or regional priorities: 5 percent.

(ix) The readiness of the project to proceed towards development, including a demonstration by the prospective borrower that there is reasonable expectation that the contracting process for construction of the project can commence by not later than ninety days after the date on which a Federal credit instrument is obligated: 5 percent.

(x) The extent to which the project financing plan includes public or private financing in addition to assistance under WIFIA: 5 percent.

(xi) The extent to which assistance under WIFIA reduces the contribution of Federal assistance to the project: 5 percent.

(xii) 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: 10 percent.

(xiii) The extent to which the project serves economically stressed

communities, or pockets of economically stressed rate payers within otherwise non-communities: 10 percent.

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 these selection criteria in the LOI submission.

In the event that EPA changes the application or selection process to incorporate best practices from the initial round, a new NOFA will be published. Any updates will also be available on the WIFIA Web site: <https://www.epa.gov/wifia/>.

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Dated: December 22, 2016.

**Gina McCarthy,**  
*Administrator.*

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