



July 21, 2016

EPA Docket Center  
Environmental Protection Agency  
Mail Code 28221T  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

RE: Docket ID EPA-HQ-OW-2016-0178, Agency Information Collection Activities; Proposals, Submissions, and Approvals: EPA Application Materials for the Water Infrastructure Finance and Innovation Act

Dear Sir or Madam,

The American Water Works Association (AWWA), the National Association of Clean Water Agencies (NACWA), National Association of Water Companies (NAWC), Water Environment Federation (WEF) and WaterReuse appreciate the opportunity to provide comments on the agency's proposed information collection request (ICR) to support the Water Infrastructure Finance and Innovation Act (WIFIA) program. Our organizations supported Congress' creation of WIFIA, and continue to support EPA's actions to implement this loan program. WIFIA will provide much-needed support to community

programs addressing water infrastructure investment challenges. We offer these comments with the goal of accelerating program implementation and assuring long-term success by managing implementation burdens. We also concur with comments submitted by the Association of Metropolitan Water Agencies.

We participated in the listening sessions EPA conducted across the country to solicit input from stakeholders on the implementation of WIFIA. The information exchanged in those listening sessions informed the following comments.

In summary, we support EPA collecting information necessary to determine whether proposed projects are creditworthy and meet other federal requirements to receive WIFIA credit assistance. However, it is critical that EPA revisit its proposed fee structure. The fees as proposed in the current ICR represent a level of burden that could jeopardize the program's success. The associations represented in this letter look forward to continuing to work with EPA and the Office of Management and Budget (OMB) toward the goal of implementing an efficient and sustainable WIFIA program as quickly as possible.

We note that WIFIA is open to privately held or investor-owned utilities as well as municipal utilities. The EPA documents make reference to "municipal" utilities. We urge the agency to clarify the language in the draft documents so that it is clear that the documents are referring to private-sector and municipal utilities.

### **Available Information to Assess the ICR**

The WIFIA Program Guide was not included with the ICR supporting materials and appears to still be under development. In order to fully evaluate the burden of the ICR, it is necessary to understand the details of implementation at the level presented in the Program Guide. We appreciate the need for parallel development of the ICR and the WIFIA Program Guide, and encourage EPA to publish the draft Program Guide for comment prior to finalizing the draft Letter of Interest and Application documents and this information collection request. The comments offered on this ICR can directly contribute to development of the WIFIA Program Guide.

### **Two-Step Loan Application Process**

We believe the two-step process for seeking WIFIA assistance, whereby a project sponsor submits a letter of interest and, if invited by EPA, next submits a project application, is an appropriate way to evaluate prospective WIFIA projects.

### Letter of Interest

In a two-step process, the letter of interest (LOI) should serve two purposes. First, the LOI functions to open a more formal dialogue between EPA and the interested community regarding a proposed project, during which EPA will conduct a preliminary screening of the project to determine eligibility and initial creditworthiness. To foster access to new pilot program by a broad range of potential borrowers, we encourage EPA to offer technical assistance and other informal guidance to prospective borrowers considering WIFIA credit assistance before any submission of a letter of interest.

Second, as a statutory requirement, EPA must give state revolving fund (SRF) programs a right of first refusal to provide assistance to an SRF-eligible project seeking WIFIA assistance, providing potentially significant time for the states to evaluate WIFIA applicants for SRF assistance ahead of EPA's receipt of a complete application.

For the LOI to serve these purposes, it need not include a working financial model or a preliminary rating letter, both of which are required in the LOI stage for TIFIA applicants. The agency is taking a meaningful step in limiting the burden associated with this ICR by not requiring these items at the LOI step in the WIFIA application process.

### Project Application

We ask the agency to continue to work with AWWA, NACWA, NAWC, WEF and other stakeholders to revise and clarify the application as suggested below.

### Eligible Projects

The impetus and legislative history of the WIFIA program reveal that one key aim of the program is to support a diverse array of water sector (e.g., drinking water, wastewater, stormwater, and recycled water) facility construction, rehabilitation, and expansion projects, including but not limited to:

- Raw water supply,
- Transmission,
- Treatment,
- Storage,
- Enhanced energy efficiency,
- Desalination,
- Aquifer recharge,

- Water recycling,
- Distribution / collection systems, and
- Discharge facilities.

We support the agency's approach of providing a single application process for this diverse array of project types, but EPA should recognize that the scope and scale of different types of projects will impact the burden associated with providing the information requested.

### *Key Definitions*

*Project.* It is important that the application process does not inadvertently impose inappropriate limits on project eligibility. For example, the definition of "project" included in the draft application refers to the repair and rehabilitation of "aging" water infrastructure, but the need for replacement or renewal of infrastructure is not simply linked to time in service. The application also appears to preclude water resource projects, e.g., construction of reservoirs, drilling of wells, but this constraint does not appear in the statutory definition of "project."

*Eligible Project Costs.* There are also typical project costs that are not reflected in the application's definition of "eligible project costs" that should be included. One example is inspection costs. Construction inspection is a critical element of any capital project and an essential aspect of building an asset that will provide service commensurate with the duration of the loan. Other costs for which eligibility clarification would be helpful include demolition costs and planning and development costs that could be eligible retroactively in the financing package.

There are also atypical costs where eligibility should be clarified. One example is the use of WIFIA funds for investment in assets not owned by the applicant, for example, with the complete replacement of drinking water service line, a sewer lateral, or stormwater piping where a portion of the asset is owned by a customer.

### *Supporting Narrative*

*Section B. Detailed Project Information.* The application should draw on information available at the time the application is due to the agency. The generation of data that will change as the project evolves represents an unnecessary burden for applicants and could be misleading to the agency.

Large-scale projects are often multi-year, multi-phase endeavors. In Section B, the draft application requires submission of construction plans, specifications and

permits. However, final construction plans and permits are not likely to be in hand or even pursued for multi-year projects at the time funding sources are being secured, especially plans for the latter phases of such projects. Also, the WIFIA authorizing statute does not require all plans to be in place at the time of application. For these reasons, the requirement to submit plans, specifications and permits with the application should expressly recognize that final versions of these documents may not be in place at the time of application. On another topic, the law creating WIFIA has no prohibitions against financing design-build projects, but the upcoming Program Guide should make it clear that that type of project is eligible for WIFIA support.

*Section E. Financing Plan.* The application should also clarify the agency's request for rate studies and rate schedules. See Section E.7., where the draft application requires, "If applicable, include the last three rate studies and rate schedules." Given this statement, some prospective project sponsors may not believe they are qualified to apply if they only have one or two studies available. Some utilities conduct rate studies every two to three years. It would be more appropriate for the agency to request the most recent rate studies conducted within the last 10 years prior to the application.

#### *Reducing the Information Collection Burden of the Application*

There are significant opportunities to reduce the burden of completing the application through the following practices:

*Retention of applicant submissions for consideration in subsequent award cycles.* Anticipated funding levels for WIFIA will lead to some applicants completing applications but not receiving funding in a given year. Retention of applicant submissions would minimize redundant paperwork for prospective projects and speed re-consideration of prospective projects in subsequent funding cycles.

*Framework for "Bundled Project" Applications.* The WIFIA authorizing legislation allows for bundling of certain projects into a single loan application See Sec. 3903(b). WIFIA loans may have up to a 35-year repayment period, which may begin five years after substantial completion of a project. Consequently, a multi-project loan package will include projects within a bundled project application that have different timelines and/or completion dates and funding sources. We would like to see more information on how EPA will structure such a bundled application.

## **Fees**

A significant aspect of the burden in this ICR is the imposition of fees for processing applications. We have serious concerns about the fees cited in the draft documents and believe they could present a barrier to accessing WIFIA assistance. We understand that because the interest rate on a WIFIA loan will be at U.S. Treasury rates for comparable term debt, WIFIA would enable a utility and the community it serves to reduce some of the interest expense of long-term borrowing, should the project applicant be successful in securing WIFIA assistance. As a result, prospective borrowers must weigh the costs and likelihood of securing a WIFIA loan against the interest-rate savings of WIFIA assistance. This applies similarly to the private-sector water utilities, who must also pay fees to investment bankers when issuing debt.

Additionally, we are concerned that these fees pose a burden on potential borrowers that could limit the program's effectiveness, potentially undermining Congress' ability to assess this pilot program on the merits at the end of its five-year period. Applicants will be exposed to costs in addition to these fees, such as those for legal, financial and technical services. It is important to emphasize that Congress created WIFIA to increase the amount of low-cost capital available for water infrastructure investment.

### EPA's Administrative Funding for the WIFIA Program

We urge EPA to explore all options for minimizing application fees, including the use of the agency's appropriation for administering WIFIA.

Congress has authorized EPA to receive \$2.2 million annually to administer WIFIA in each of fiscal years 2015 and 2016. We also note that there is appropriations legislation now before Congress that would more than double that amount, providing \$5 million for fiscal year 2017. EPA should use a portion of this administrative funding to offset or eliminate the cost of applying for a WIFIA loan, particularly the initial \$100,000 application fee.

### Application Fee

The ICR documents describe the application fee as non-refundable. This fact alone may deter potential project sponsors from applying. The prospect of a non-refundable application fee is not a prudent use of limited public funds.

### Credit-Processing Fee

The fees for WIFIA assistance are higher than the fees for other comparable sources of borrowing for water infrastructure projects, and structuring a credit processing fee as a

variable fee could deter applicants concerned about controlling overall administrative costs.

Points of comparison for loan processing costs include the state revolving loan fund programs operated under the Safe Drinking Water Act (42 USC 300f) and Clean Water Act (33 USC 1251). These programs are administered by state agencies and the application process and fees vary widely from state-to-state. Recognizing the diversity of state approaches to implementation, in 2004 and 2006 EPA prepared ICRs for these two loan programs.

Loan Application Costs Reflected in CWSRF ICR (2004) and DWSRF ICR (2006).

SRF Program	Local Application Development		State Application Review	
	CWSRF	60 hr	@ \$25/hr = ave cost/app of \$1,500	40 hr
DWSRF	80 hr	@ \$25/hr = ave. cost/app of \$2,000	40 hr	@ \$36.1/hr = ave cost/app of \$1,444

A second point of reference for loan processing costs is the costs utilities incur when issuing bonds. Based on reviews by multiple utilities, we have determined that the typical cost of obtaining a credit rating, plus the services of a financial advisor, bond counsel, tax counsel and related expenses as percentage of total bonded value can range from 0.35% to 2%. Issuance costs equal to 2% of the bond issue amount are typically viewed as the upper limit of what such fees should total. For large issuances, those fees are usually well below that 2% figure. For a smaller project receiving a \$10 million loan, applying that 2% standard would suggest that the \$200,000 WIFIA figure is reasonable, but the \$200,000 credit processing fee is not the end of costs a WIFIA applicant can reasonably expect to incur. Importantly, the costs associated with traditional bond issuance are incurred with the near certainty of securing funding and thus represent a clear return on investment. Some additional upfront costs to pursuing WIFIA assistance that are not reflected in the application fee and credit processing fee include:

*Costs of Co-Financing.* The WIFIA program, as established by Congress, caps the WIFIA contribution to a project at 49% of eligible project costs. This 49% limit on WIFIA support means that a community seeking a WIFIA loan must also apply for financing from other sources. When the other source of funds for 51% of the project cost is the

bond market, there will be considerable additional administrative costs associated with issuing bonds or assembling a public-private partnership that are not captured in the ICR. These costs are inherent in WIFIA because of the program's 49% limit, and are an important reason to more carefully evaluate the opportunities for reducing proposed WIFIA fee levels.

*Rating Letters upon Closing.* The costs associated with bond issuances cited above include services by rating agencies, but with WIFIA, the costs of securing ratings from two rating agencies are in addition to the application fee and the credit processing fee and could total \$20,000 to \$25,000.

*Annual Servicing Fees and Annual Ratings Letters.* Another concern is the possibility of annual costs for additional credit analysis or ratings and annual loan servicing fees. Water and wastewater projects are financed by reliable revenue streams unrelated to project performance, (i.e., local rates and charges), and the default rate for the water sector is very low, historically at approximately 0.04%. For these reasons, we believe an annual rating of such projects would constitute an unnecessary cost on project sponsors.

#### Additional Ways to Reduce Fee Burden

Opportunities to reduce the burden of upfront application and credit processing fees include:

1. Allowing applicants to roll the credit-processing fee into the loan amount as an eligible project cost.
2. Applying the application fee toward the credit-processing fee when the loan is executed.
3. Establish a fixed credit processing fee either as a percentage of principal costs or a fixed dollar figure.
4. Not charging an annual fee for loan servicing.
5. Not requiring annual ratings.

Implementing an efficient and effective WIFIA loan program to address our nation's growing water infrastructure investment needs is an objective that we share with EPA and OMB, and these comments have been offered with that goal in mind. We look forward to continuing to work productively and cooperatively with EPA to address our concerns with the burdens, and particularly the fees associated with accessing WIFIA assistance. If you have any questions regarding these comments please contact



July 21, 2016

Page 9

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Sincerely,

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