



July 22, 2016

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

RE: Docket ID No. EPA-HQ-OW- 2016-0178

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on EPA’s information collection request (ICR) regarding draft application materials for the Water Infrastructure Finance and Innovation Act (WIFIA) pilot program. AMWA is an organization of the nation’s largest publicly owned drinking water utilities, and our members strongly supported establishment of WIFIA through Public Law 113-121. AMWA actively participated in the series of listening sessions held in 2014 to help the agency collect initial feedback on the framework of WIFIA, and we are pleased that EPA’s diligence in developing application materials will allow the program to become operational as soon as possible.

The following comments reflect AMWA’s general feedback on WIFIA’s proposed fee schedule and application process as outlined in the ICR, as well as targeted comments and suggestions tailored to specific portions EPA’s draft letter of interest and draft application. Additionally, AMWA endorses similar comments submitted separately by the American Water Works Association, the National Association of Clean Water Agencies, the National Association of Water Companies, the Water Environment Federation, and the WateReuse Association.

General Comments

Based upon the draft letter of interest and draft application, as well as information contained in the ICR supporting statement, it appears that EPA envisions a two-step application process for entities seeking WIFIA loans. First, a potential WIFIA project sponsor would submit to EPA a letter of interest outlining information such as project plans, financing information, and compatibility with selection criteria mandated by Congress and developed by the agency. EPA would examine these letters of interest to identify eligible projects and rank them against the selection criteria. EPA would then invite certain project sponsors to submit a formal application that provides more detailed information, which the agency would use to certify the creditworthiness of the project and the applicant, and to calculate the amount of budget authority necessary to finance the project.

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AMWA believes that this process as outlined is reasonable, and we appreciate that no application fee or other payment would be required at the time of submission of a preliminary letter of interest. This will allow potential applicants to submit initial project information to the agency without having to forfeit any fees, and will encourage more communities to explore financing options through WIFIA.

We understand entities that are subsequently invited by EPA to submit a formal application would be required to pay a nonrefundable application fee of \$100,000 (or \$25,000 in the case of projects serving small communities with populations less than 25,000 people) upon submission. According to the draft application, applicants that advance on to loan closing would subsequently pay an additional credit processing fee that would vary based on project details but is estimated by EPA to be approximately \$200,000.

While we recognize that P.L. 113-121 authorizes the agency to collect appropriate application and credit processing fees, we believe additional transparency is needed to demonstrate why the collection of these or any other fees from applicants is necessary to supplement the dedicated funding that Congress is expected to deliver to EPA for WIFIA program administration.

According to the ICR supporting statement, EPA estimates that staffing needs associated with collecting and reviewing WIFIA letters of interest and applications will represent five full time equivalents per year at an annualized cost of \$765,632. EPA expects to solicit and review five WIFIA applications per year, with total credit processing costs associated with necessary legal, financial, and other expert contractor support equal to approximately \$1,000,000. Finally, EPA expects to print 7,500 pages of letters of interest and applications at a cost of 2 cents per page, representing a total printing cost of \$150. In sum, the ICR suggests EPA will incur an annual cost of roughly \$1,765,782 to administer the WIFIA program.

P.L. 113-121 authorizes EPA to reserve up to \$2.2 million of each year's WIFIA appropriation for administrative costs. However, the administration's FY17 budget request to Congress sought \$5 million specifically "for the Office of Water's management and operation of the [WIFIA] program, including contract support and associated payroll." The FY17 Interior and Environment appropriations bill approved by the House of Representatives on July 14, 2016 (H.R. 5538), as well a similar FY17 spending bill approved by the Senate Appropriations Committee on June 16, 2016 (S. 3068), each included this full \$5 million set aside for WIFIA administrative costs.

Given that EPA's FY17 budget request for WIFIA administrative costs was nearly three times larger than the ICR's estimate of the program's annual operating expenses, we question whether it is necessary for the agency to further collect application and credit processing fees of approximately \$300,000 per applicant. We are particularly concerned that the prospect of paying an upfront, \$100,000 fee at the time of application – without an assurance that a loan will eventually be offered – could deter many public water systems from considering WIFIA as an affordable infrastructure financing option.

Water systems could also be discouraged from considering WIFIA if credit processing fees must be paid regardless of the outcome of the WIFIA application, but the ICR is unclear on this point. The ICR supporting statement explains that the “credit processing fee will be due upon loan closing,” which suggests that only applicants who advance to this stage will be required to pay it. But the draft application itself specifies that the credit processing fee will cover EPA “costs in connection with the evaluation and negotiation of the terms of WIFIA credit assistance for the project,” and that “[t]he applicant must reimburse EPA for costs incurred in negotiating the credit agreement irrespective of whether the credit agreement is executed.” This implies that all applicants will be required to pay EPA a roughly-\$200,000 credit processing fee (in addition to the \$100,000 application fee) even if WIFIA financing is not eventually obtained.

The proposed WIFIA fee structure amounts to a substantial investment in uncertainty that many communities may be unwilling or unable to make. Rather than imposing application and credit processing fees simply because Congress permitted the agency to do so, EPA should take all steps possible to minimize the financial burdens of seeking WIFIA assistance, especially during the program’s critical pilot phase.

Even if the collection of some level of fees is proven necessary to facilitate administration of WIFIA, we believe EPA should further explore ways to both reduce any fees and make them more manageable for program applicants. For example, EPA should consider refunding application fees to sponsors whose projects do not eventually receive WIFIA loans, and successful applicants should be allowed to amortize fees over their loan repayment period. Each of these changes would make WIFIA’s fee schedule less burdensome to potential applicants and would reflect the best practices of other state and federal infrastructure assistance programs. The U.S. Department of Transportation, for example, allows applicants for Transportation Infrastructure Finance and Innovation Act (TIFIA) loans to credit their initial fee payment of \$100,000 toward subsequent credit processing fees that are due upon loan closing. Several states similarly allow Drinking Water State Revolving Fund (DWSRF) loan recipients to roll applicable program administration fees into their loan’s principal balance, thus allowing communities to access low-cost loans without having to post significant application fees upfront. Incorporating similar flexibility into WIFIA’s fee structure is strongly recommended.

In terms of the amount of time necessary to apply for WIFIA assistance, EPA estimates that each project sponsor may spend 50 hours completing a letter of interest, and 100 hours completing each application. These time burdens are substantial, so steps should be taken to eliminate any extraneous information collection as well as the duplication of information that is requested in both the letter of interest and the application. Such streamlining would reduce time burdens on both project sponsors and EPA staff.

Beyond these points AMWA recommends further clarification on several components of the application process, such as:

- How will EPA determine, based on information included in the letter of interest, which project sponsors will be invited to continue the process and submit a formal application? Will this invitation be based strictly on EPA’s ranking of projects

against the defined selection criteria, or will EPA seek to invite a diversified list of potential projects to apply (potentially resulting in an annual balance of drinking water, wastewater, and stormwater projects, or projects from a variety of different regions of the country)? Will certain selection criteria be weighted more heavily than others, and if so will potential applicants be notified of this so they may submit their most competitive proposals? Will the rationale behind EPA's decisions on how to rank or whether to invite an application regarding a particular project be made public?

- When soliciting letters of interest, will EPA provide a “date certain” by which qualifying interested parties will receive an invitation to submit an application? And when an application is submitted, will EPA be able to tell applicants when to expect a final decision on WIFIA funding? Because potential applicants will in many cases face defined project completion deadlines, not all will be able to wait an indeterminate amount of time for a decision on a WIFIA letter of interest or application before pursuing alternate financing options.
- If a project sponsor declines an invitation to submit a project application, will another project sponsor then be invited to submit an application in its place? Will this “substitute” project simply represent the next-highest-ranking project based on the selection criteria, or will EPA use other means to identify a substitute project? Will a project sponsor receiving a “substitute” invitation be provided with additional time to make a decision on whether to submit an application?
- Will project sponsors be permitted to submit an application (and an application fee) in the absence of a formal invitation to do so from EPA? If so, will EPA evaluate these unsolicited applications using the same criteria as it will use to evaluate invited applications?
- Does EPA intend to invite at least one project serving a small community to apply each year, regardless of that project's ranking against the defined selection criteria? If the sponsor of a small project declines an invitation to submit an application, will EPA only consider inviting another small project in its place?

Letter of Interest Comments

The following comments are in response to specific items in EPA's draft letter of interest:

Page 1, Selection

This section explains that project sponsors invited to submit applications will be “required to pay an application fee.” EPA's supporting statement released with the ICR reports that the typical WIFIA application fee will be \$100,000, and a typical credit processing fee will be roughly \$200,000. These fees are significant, and their necessity should be reevaluated per our previous comments. If included, the estimated fee amounts should be clearly specified on the letter of interest.

Page 4, Section A: Interested Party Information

Question 4 asks the interested party to provide their congressional district. It is unclear why EPA needs interested parties to provide this information, and its inclusion could lead to speculation that certain projects may be evaluated differently based on political interests. It is also unclear how an interested party should answer this question if the planned water infrastructure project would involve construction across, or serve customers in, multiple congressional districts.

Question 14 asks about the interested party's "preparedness to submit an application within 365 days after receiving an invitation to advance." It would be helpful for EPA to provide an estimated timeframe for when an invitation to advance will be issued, following collection of the letters of interest. This will allow interested parties, at the time of completing a letter of interest, to have a more complete estimate of the total amount of time they can expect to have to gather necessary materials and complete an application.

Page 5, Section B: Project Plan

Question 4 asks for a description of the project location, "including major intersecting highway and rail routes." Many water treatment facilities or other water infrastructure assets, by design, may not be located immediately adjacent to major transportation routes. Conversely, some water infrastructure projects may involve digging or tunneling under multiple roads. Some interested parties therefore may not have a concise answer to the question of nearby transportation routes, so the question instead should only seek more general information about a project's location. If nearby highway or rail routes are relevant to the description of the project location, an interested party would be free to include that information.

Question 8 should be divided into two separate questions: one requesting a description of the project's purpose, and another requesting an explanation of the project's design features.

Page 6, Section D: Financing Plan

Question 2 asks interested parties to break down project costs between costs that are eligible and ineligible for WIFIA assistance. It would be helpful for the document to include a brief summary of project costs eligible for WIFIA (as described in Section 5027 of P.L. 113-121), as many interested parties may not have this information readily available.

Page 7, Section E: Selection Criteria

AMWA appreciates that EPA's selection criteria for WIFIA projects includes a consideration of the extent to which a project addresses repair, rehabilitation, or replacement needs of a drinking water or wastewater system, as reflected in question 10. This is not one of the selection criteria that EPA is required by law to consider, but Congress gave EPA authority to develop and consider additional selection criteria beyond those specified in the authorizing statute. Because Congress' intent in creating WIFIA was clearly to provide cost-effective financing for large-scale water and wastewater infrastructure projects, it is appropriate for EPA to consider a projects' ability to further this goal during the evaluation process.

Page 7, Section F: Contact Information

Contact information for primary and secondary contacts should leave space to include the name of the utility or organization that employs the contact person.

Application Comments

The following comments are in response to specific portions of EPA’s draft application:

Page 1, Introduction

The application states that EPA “will invite selected interested parties to submit this application” for WIFIA assistance. EPA should state outright on the form whether all qualifying interested parties will be invited to submit applications, or instead whether only certain selected interested parties will be invited (thus excluding some qualifying potential applicants).

Page 1, Charges

Again, we question the need for the application of these fees per our previous comments. If included, along with explaining that applicants must pay nonrefundable application and credit processing fees, the application should clearly specify EPA’s estimated amounts of these fees.

Page 5, Application Form

The term “legal name” in Question 1 is vague and could be construed to request legal name of the individual completing the document. We recommend requesting the “Legal name of applicant”.

Page 5, Application Form

Question 9 asks the applicant to provide their congressional district. Just as we question why EPA needs interested parties to provide this information on the letter of interest, we also do not understand why it should be provided on the application. We fear that the inclusion of this information could lead to speculation that certain projects may be evaluated differently based on political interests, and it is unclear how an applicant should answer this question for a project that would involve construction activities or serve customers across multiple congressional districts..

Page 7

The contact information space for primary and secondary contacts should include a line to input the name of the utility or organization where the contact person is employed.

Pages 8 – 11: Narrative

This section requests a significant amount of in-depth information about the project (including alternatives analysis, environmental review documents, and operation and maintenance plans). EPA should consider the extent that all of this information is necessary, especially if the purpose of the application is only to “ensure that the applicant and the project(s) are creditworthy and to calculate the amount of budget authority that will be needed to fund the project(s).” Any material that is not central to making this determination should not be required as part of the application.

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Conclusion

Again, AMWA appreciates EPA's ongoing efforts to activate the WIFIA program and welcomes the opportunity to comment on EPA's information collection request on draft WIFIA application materials. We hope you find these comments useful, and we look forward to the successful implementation of WIFIA as soon as possible.

Sincerely,



Diane VanDe Hei
Chief Executive Officer

cc: Andrew Sawyers, Director, Office of Wastewater Management, U.S. EPA
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