



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

June 22, 2022

MEMORANDUM

SUBJECT: The EPA's Approval and Oversight of Water Infrastructure Finance and Innovation Act Loans Complied with Federal Law and Regulations
Report No. 22-P-0048

FROM: Sean W. O'Donnell

A handwritten signature in blue ink that reads "Sean W O'Donnell".

TO: Radhika Fox, Assistant Administrator
Office of Water

The U.S. Environmental Protection Agency's Office of Inspector General initiated this audit to determine whether the EPA's process for awarding, overseeing, and monitoring loan awards made under the Water Infrastructure Finance and Innovation Act of 2014, or WIFIA, complies with the statute, regulations, and EPA policy.

Based on our audit, we determined that the WIFIA program's loan-award process and subsequent monitoring activities provided reasonable assurance that WIFIA loans were administered in accordance with federal and EPA requirements and that funding was used as intended to improve America's public water infrastructure.

You are not required to respond to this report because this report contains no recommendations. If you submit a response, however, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

This audit supports EPA mission-related efforts:

- Operating efficiently and effectively.
- Ensuring clean and safe water.

This audit addresses a top EPA management challenge:

- Managing infrastructure funding and business operations.

Background

WIFIA, codified at 33 U.S.C. 3901–3915, was established under the 2014 Water Resources Reform and Development Act. WIFIA has been amended several times, with the most recent amendment occurring in 2021. Supporting federal regulations appear in 40 C.F.R. part 35, "State and Local Assistance," subpart Q, "Credit Assistance for Water Infrastructure Projects." WIFIA authorizes the EPA to provide direct loans and loan guarantees to eligible borrowers, including local, state, tribal, and federal government entities; corporations and trusts; and state Clean Water and Drinking Water State Revolving Fund programs.

All projects that receive WIFIA credit assistance (loans) must be cofinanced with other sources of funding, such as bonds, other loans, grants, or equity. WIFIA loans are not to exceed 49 percent of the reasonably anticipated eligible project costs, with total federal funding for the projects not to exceed 80 percent of those costs. The reasonably anticipated eligible project costs must be at least \$20 million for large communities over 25,000 individuals or \$5 million for small communities of 25,000 or fewer individuals. Loan options include customized disbursements, repayment schedules of up to 35 years, and fixed interest rates equal to or greater than the U.S. Department of the Treasury rate for comparable loans.

The EPA issued its first *Notice of Funding Availability* in January 2017 and awarded its first WIFIA loan in April 2018. According to the *Fiscal Year 2022 EPA Justification of Appropriation*, as of May 2021, the EPA had awarded 50 WIFIA loans totaling more than \$9 billion. With award recipients' cofinanced funding, water infrastructure total project investment was nearly \$20 billion.

In 2017, the EPA issued the *WIFIA Program Handbook* to clarify the loan process and requirements for prospective borrowers. The WIFIA program subsequently made several updates to the *Handbook* to provide additional clarifications, with the most recent update made in April 2021. The [*Handbook*](#) describes:

- How the EPA administers the WIFIA program.
- What the eligibility requirements are to obtain a WIFIA loan.
- How loan recipients can remain in compliance with WIFIA program rules and regulations.

The *Handbook* provides instructions and examples to assist prospective borrowers throughout the WIFIA loan process. For example, the *Handbook* contains an appendix with guidelines for completing the initial loan request, which is known as a *Letter of Interest*, and a section titled “Negotiation” that helps provide prospective borrowers with a better understanding of the loan process and requirements, including steps to evaluate the risks associated with loan default. The 2021 version of the *Handbook* also contains additional instructions for more complex loans, such as those for:

- Multiple construction projects.
- Construction projects that are under a “master agreement,” which allows a borrower to close multiple loans over time.
- Combinations of construction projects submitted by state infrastructure finance authorities.

Although the *Handbook* was designed for prospective borrowers, it is also a source of information for the WIFIA staff because the *Handbook* describes Agency roles and responsibilities for selecting, awarding, and monitoring loans. In addition to the *Handbook*, the WIFIA program issues policies and procedures on specific aspects of the WIFIA program and loan process to guide WIFIA program staff. These policies and procedures address such topics as:

- Application extensions.
- Loan amount and project scope changes.
- Eligible financing costs.
- National Environmental Policy Act compliance for loans to State Revolving Funds.
- Employment of engineering consultants and financial advisors for transactions.

Responsible Office

The Office of Wastewater Management's WIFIA Management Division, which is within the Office of Water, manages the WIFIA program. This division, through its two branches and six teams, is responsible for developing the program's policy, managing the loan application and award process, and overseeing the existing loans.

Scope and Methodology

We conducted this audit from September 2020 through May 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed the internal controls necessary to satisfy our audit objective.¹ In particular, we assessed the internal control components—as outlined in the U.S. Government Accountability Office's GAO-14-704G, *Standards for Internal Control in the Federal Government*—significant to our audit objective. We did not identify any internal control deficiencies. Because our audit was limited to the internal control components deemed significant to our audit objective, it may not have disclosed all internal control deficiencies that may have existed at the time of the audit.

To answer our objective, we reviewed relevant WIFIA laws and regulations and EPA policies and guidance and interviewed the WIFIA program's director and program managers, to obtain an understanding of the WIFIA program's requirements and process for awarding, overseeing, and monitoring loans. We also reviewed four (roughly 12 percent) of the 33 WIFIA loans awarded from fiscal years 2018 through 2020. These four loans totaled over \$769 million (approximately 11 percent) of the total \$6.7 billion in WIFIA loan awards. We selected the following loans for review:

- The WIFIA program's first loan award of \$134.5 million to King County, Washington, for a new wet-weather-treatment station, with a total project cost of \$275 million.
- A State Revolving Fund loan of \$436 million to the Indiana Finance Authority for multiple water and wastewater projects, with a total project cost of \$892 million.
- A small-community loan of \$61.7 million to the City of Morro Bay, California, for a water-reclamation-facility project, with a total project cost of \$125.9 million.
- A large-community loan of \$137.1 million to the City of Waukesha, Wisconsin, for a Great Lakes water-supply project, with a total project cost of \$301.5 million.

The WIFIA program administered the loans in three phases:

- Project selection (solicitation).
- Project review, negotiation and documentation, and closing (award).
- Postclosing activities and monitoring.

¹ An entity designs, implements, and operates internal controls to achieve its objectives related to operations, reporting, and compliance. The U.S. Government Accountability Office sets internal control standards for federal entities in GAO-14-704G, *Standards for Internal Control in the Federal Government*, issued September 10, 2014.

For each WIFIA loan reviewed, we analyzed documentation supporting the program’s actions, decisions, and approvals throughout each of the three phases of the loan process to determine compliance with program requirements.

Prior Report

EPA OIG Report No. [19-P-0045](#), *EPA’s Water Infrastructure Finance and Innovation Act Program Needs Additional Internal Controls*, issued December 14, 2018, identified numerous deficiencies pertaining to the EPA’s management of the WIFIA program. Specifically, the EPA did not prepare a comprehensive program risk assessment before establishing the program. Further, the EPA did not develop program performance measures to identify and capture all financial data and public health benefits to affected communities. Lastly, the EPA needed to strengthen its SharePoint access controls for the program. The report included four recommendations to address these deficiencies. The four recommendations have been resolved, and the corrective actions have been completed.

Results

We determined that the WIFIA program’s policies and procedures provided reasonable assurance that the loans were awarded and monitored in accordance with federal and EPA requirements. We also determined that funding was used as intended to improve America’s public water infrastructure. The four loans we reviewed complied with federal and EPA requirements under the WIFIA program. Where EPA staff identified noncompliance during project monitoring, the WIFIA program and the borrower took appropriate corrective actions to promptly address the deficiencies.

The WIFIA program’s loan-administration process consists of three phases. The steps and requirements for these phases are outlined in the *Handbook* and other applicable guidance for specific activities. Based on the supporting documentation we reviewed for the four loans we analyzed, Agency staff followed the process for each phase to ensure compliance with federal and EPA requirements. Our analysis of the four loans is detailed in the following paragraphs.

Oversight

Robust Agency oversight of infrastructure loan programs, such as the WIFIA program, is critical to improving public health and environmental protections.

Phase One: Project Selection (Solicitation)

In this phase, the WIFIA program reviews *Letters of Interest* from prospective borrowers and selects projects that the program intends to fund. The WIFIA staff obtained these *Letters of Interest* after the Agency’s publication of its annual *Notice of Funding Availability* and reviewed them to make recommendations for project selection. The selection criteria are published in the *Notice of Funding Availability* in accordance with the federal requirements in 40 C.F.R. § 35.10015(a). We verified that these selection criteria were consistent with the requirements in 40 C.F.R. § 35.10055(a) and (b).

Phase Two: Project Review, Negotiation/Documentation, and Closing (Award)

The second phase of the process involves a detailed review of the WIFIA loan application and supporting documentation and a negotiation of loan terms and conditions. Loan closing requires clearances from officials outside the WIFIA program and the Office of Water, including officials from the EPA’s Office of General Counsel for concurrence with the loan, officials from the Office of Management and Budget

for approval of the credit-subsidy cost estimates and authorization for the EPA to commit resources,² and the EPA administrator for final approval.

We determined that the loans that Agency staff recommended for approval complied with the requirements as identified in WIFIA, the accompanying regulations at 40 C.F.R. part 35, and the *Handbook*. For example, the loan applications included the loan-selection criteria, which detailed the borrowers' eligibility and preliminary creditworthiness, the projects' engineering feasibility, and other required information based on the selection criteria contained in the *Notice of Funding Availability*. Each loan package's supporting documents contained an assessment of the applicant's credit rating, the project's risk, a financial advisor review, and a credit council recommendation. In addition, the staff verified that the allowable project cost, loan-disbursement schedule, and repayment period were within the limits set by regulation. We verified that the EPA closed the loans after the Office of General Counsel recommended their approval to the administrator, the Office of Management and Budget authorized their credit-subsidy costs, and the administrator approved the loan agreements.

Phase Three: Postclosing Activities and Monitoring

After a loan is issued, EPA staff enter the postclosing activities and monitoring phase. This phase consists of disbursements, loan servicing, and loan monitoring. We determined that the WIFIA program's staff followed applicable requirements for the four loans we reviewed. These requirements included verification of compliance with Davis-Bacon Act/American Iron & Steel requirements and waivers (when applicable), interest rate reexecutions, and disbursement and repayment activity. We confirmed that the WIFIA loan files contained reviews of loan recipients' annual financial statements, construction progress reports, and site-visit reports.

Conclusion

Based on the four loans we reviewed and our assessment of the WIFIA loan-award and -monitoring process, we determined that the WIFIA program complied with federal requirements under WIFIA and 40 C.F.R. part 35, subpart Q, as well as EPA policy outlined in the *Handbook* and other policies and procedures. Agency staff:

- Regularly updated the *Handbook* to better convey loan-application requirements.
- Monitored loans for compliance with terms and conditions.

The OIG's 2018 report about the WIFIA program identified numerous deficiencies and made recommendations for improvement, which the Agency implemented through corrective actions. Our current audit of the WIFIA loan-award and -oversight processes indicates that the program has taken important steps to improve accountability and America's water infrastructure. Based on the results of our loan analysis and the monitoring performed by EPA staff after loans were issued, we do not have any recommendations.

cc: Michael S. Regan, Administrator
Janet McCabe, Deputy Administrator
Dan Utech, Chief of Staff, Office of the Administrator
Wesley J. Carpenter, Deputy Chief of Staff, Office of the Administrator
Faisal Amin, Agency Follow-Up Official (the CFO)

² The Office of Management and Budget authorizes the credit-subsidy cost estimates that cover the federal government's risk in case the loan is not paid back.

Andrew LeBlanc, Agency Follow-Up Coordinator
Susan Perkins, Agency Follow-Up Coordinator
Jeffrey Prieto, General Counsel
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Lindsay Hamilton, Associate Administrator for Public Affairs
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