

InRecap

April 28, 2023

Jeff Arkin
Director, Strategic Issues
U.S. Government Accountability Office
Washington, DC 20548

Re: Current WIFIA FCRA Criteria Appear to be Non-Compliant with Congressional Directive

Dear Mr. Arkin:

InRecap focuses on various technical aspects of federal infrastructure loan programs. I served as an EPA SGE in 2018-2020, primarily developing financial benefit-cost analyses for the WIFIA Loan Program. My interest in WIFIA has continued at InRecap because I believe that the Program is a potentially transformational model for federal infrastructure finance.

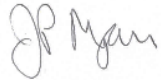
Over the last six months, I've researched and analyzed WIFIA's FCRA budgeting criteria for federally involved projects in some depth. As you know, the criteria were published in 2020 in the Federal Register in response to a detailed Congressional Directive. In the interest of efficient federal infrastructure loan program operation and development, I must point out that the published criteria do not appear to comply with the requirements of the Directive:

- Most obviously, the WIFIA FCRA criteria are not 'criteria' but a series of questions that only imply the criteria that will be applied. This non-transparent approach would appear to be inconsistent with the primary intent of the Congressional Directive.
- The WIFIA FCRA criteria do not appear to be based on FCRA law. That law is very narrowly focused on federal credit financial assets and their budgeting, not the use of loan proceeds, which is governed by individual program statutes and rules. In contrast, the criteria appear to have been broadly repurposed to determine whether a federally involved project is a 'Federal Project'. This is not a concept found in FCRA law. The criteria's Background section then conflates a Federal Project with a 'federal borrower', meaning that all Federal Projects will automatically run afoul of FCRA's exclusionary definition. This is not correct – a multi-party 'Federal Project' (however defined) may well include a substantive 'non-federal borrower' per FCRA when a non-federal project participant has the obligation to repay the loan.
- The WIFIA FCRA criteria do not appear to be based on the *relevant* recommendations of the 1967 Report. One budgeting principle from the 1967 Report is explicitly stated, from Chapter 3, that "borderline agencies and transactions should be included in the budget unless there are exceptionally persuasive reasons for exclusion." This is completely irrelevant to the FCRA issue. Everything that a thoroughly federal program like WIFIA does – especially its lending activities – will indisputably be included in the federal budget. The actual issue is whether a program loan belongs in the cash-based account or the FCRA account. The criteria appear to have ignored Chapter 5 of the 1967 Report, which is titled 'Federal Credit Programs'. This chapter describes FCRA's founding principles clearly and in detail. The primary principle outlined is that federal loans require special budgeting treatment due to a substantive obligation for repayment from non-federal sources – something that is echoed in FCRA law's definition of a FCRA loan.

- The criteria publication includes two footnotes that appear to exclude substantially all loans to projects with Army Corps or Bureau of Land Management involvement from FCRA treatment, regardless of the facts of individual loan applications. No references to FCRA, WIFIA or other statutory bases are provided. The exclusions do not appear to be consistent with FCRA law, the principles of Chapter 5 of the 1967 Report, or the scope and purpose of the Congressional Directive.

Please let me know if you have any questions or comments. Additional analyses and commentary on this topic can be found on the InRecap site in the [FCRA Non-Federal Series](#) and more recent related posts.

Sincerely yours,



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Andrea Grossman, Environment Branch, Office of Management and Budget
Colleen Mills, Office of Federal Program Finance, Department of the Treasury