

WIFIA FCRA Issue: Possible WIFIA Amendments and Congressional Directive

InRecap 08/18/2023

Version 2.0

AMENDMENT 1. NON-FEDERAL BORROWER DEFINITION

Section 5022 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3901) is amended by inserting the following:

“(16) Non-Federal borrower

The term “non-Federal borrower” means an obligor of a secured loan under section 3908 of this title that is:

- (A) not a Federal entity, agency, or instrumentality;
- (B) obligated to repay the principal and interest of the secured loan exclusively from non-Federal sources, and such sources are explicitly identified in rating opinion letters under section 3907 (a)(1)(D) of this title;
- (C) able to demonstrate that the measurable value it expects to receive from the non-Federal share of the project paid for by the proceeds of the secured loan is commensurate with the secured loan repayment obligation associated with that non-Federal share;
- (D) able to demonstrate that the decision to enter into an obligation to repay the secured loan was made (i) on an arms-length basis consistent with its normal procedures for financing major capital expenditures, (ii) independently of any Federal participant in the project, and (iii) with respect solely to the value it expects to receive from the project; and
- (E) deemed to be consistent with the meaning of a “non-Federal borrower” as that term is used in the definition of a “direct loan” in Section 502 (1) of the Federal Credit Reform Act of 1990 (2 USC 661a).”

AMENDMENT 2. NON-FEDERAL SHARE

Section 5029(b) of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3908(b)) is amended by striking paragraph (8) and inserting the following:

“(8) Non-Federal share

The proceeds of a secured loan under this section may be used to pay any non-Federal share of project costs required if the Administrator or the Secretary, as applicable, determines that the obligor of the secured loan is a non-Federal borrower.”

Congressional Directive to Modify Criteria

WATER INFRASTRUCTURE FINANCE AND INNOVATION PROGRAM ACCOUNT

...Provided further, That the Administrator, together with the Secretary of the Army and the Director of the Office of Management and Budget, shall jointly review and modify the criteria published in the Federal Register on June 30, 2020 (85 FR 39189) pursuant to the fourth proviso under the heading “Water Infrastructure Finance and Innovation Program Account” in division D of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94) to conform with amendments to the Water Infrastructure Finance and Innovation Act of 2014 enacted by this Act; and the Administrator, the Secretary and the Director shall, not later than 120 days after the date of enactment of this Act, publish such modified criteria in the Federal Register.

...Provided further, That, in reviewing and modifying the criteria, the Administrator, the Secretary, and the Director, shall consult with the Director of the Congressional Budget Office.

...Provided further, That the requirements of section 553 of title 5, United States Code, shall apply to the development and publication of such criteria.