

Email to OMB 9/22/2023

To: Andrea Grossman, OMB [Contact listed in Federal Register publication]
Cc: GAO, CBO

RE: WIFIA FCRA Criteria: Why was 'or assets' omitted in last line of Background section?

Hi Andrea:

I focus on technical aspects of federal infrastructure loan programs, including EPA's WIFIA. Over the past year, I've analyzed the FCRA eligibility issue in depth: [FCRA Non-Federal Links](#). You may recall that I cc'd you on a letter to GAO last April concerning the WIFIA FCRA Criteria's compliance with the 2020 Congressional Directive.

I've recently completed a line-by-line review of the Background section of the Criteria: [The Current Criteria's Background Section, Line-by-Line](#). The section is important because it is (as far as I know) the only place where the specific premises of the Criteria's conclusions and questions are set out with respect to FCRA law and the 1967 Report.

In that review, I noted that while everywhere else in the Background section the phrase "projects or assets" is used, the last line (which is essentially the section's overall conclusion) refers only to "non-Federal projects" with respect to WIFIA eligibility. The omission of 'or assets' there is very consequential because it excludes the consideration of the eligibility of specific non-Federal cost share assets within a federally involved project. There is no basis in FCRA law or the 1967 Report for that exclusion. Indeed, the relevant parts of both those sources are focused on specific assets and transactions, not consolidated entities with multiple participants.

- If the omission was an unintentional inconsistency, please let me know and I'll update and amend my analyses accordingly.
- However, if the omission was intentional, could you provide an explanation and justification with respect to FCRA law and the 1967 Report?

If I don't hear from you, I'll continue to conclude that the omission and its primary consequence, to arbitrarily restrict the scope of WIFIA statutory eligibility, were intentional.

Best regards,

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