WIFIA FCRA Criteria

Narrative, Counter-Narrative and New Criteria

Version 2

September 2023

The 2020 WIFIA FCRA Criteria

A WIFIA loan is not intended to finance Federal activities. When a WIFIA Section 3908(b)(8) non-Federal cost share in a federally involved project is being financed, the non-Federal nature of the cost share may be relatively complex. A loan's non-Federal nature is also a requirement of WIFIA's FCRA loan budgeting.

A 2020 Congressional Directive instructed OMB to develop FCRA criteria for WIFIA loans to non-Federal cost share. These Criteria were published in the Federal Register and include a short Background section followed by a series of questions that WIFIA cost share applicants must answer.

This presentation summarizes:

- **Pro-Criteria Narrative**: The apparent rationale for the current Criteria's approach and premise for their questions.
- **Pro-Eligibility Counter-Narrative**: Why the current Criteria are wrong.
- **Pro-Eligibility New Criteria**: An alternative to replace the current Criteria.

Pro-Criteria Narrative

1. A project or an asset with some federal involvement might be considered a wholly ‘federal project’ or ‘federal asset’ for federal budget purposes. Per the 1967 Report, if there’s any ambiguity in the determination, the project or asset should be considered federal.

2. Notwithstanding WIFIA eligibility, a Section 3908 (b)(8) non-federal cost share in a federally involved project may be a ‘federal asset’ for federal budget purposes. This is assumed to be the case for all projects involving two specific federal agencies, USACE and Bureau of Reclamation.

3. A federal asset must be recorded in the federal budget on a cash basis. Regardless of the identity of the borrower, a WIFIA loan to finance a cost share determined by the Criteria to be a ‘federal asset’ therefore must also be recorded on a cash basis, and not on a FCRA accrual basis.

Pro-Eligibility Counter-Narrative

1. The current Criteria ignore the most relevant and fundamental principles in the 1967 Budget Report. The chapter 'Coverage of the Budget' makes clear that when non-federal entities are allocating their own resources the activity *should not be included* in the federal budget. Why is this not obvious for non-federal cost share borrowers that agree to *repay millions of dollars from their own non-federal resources?*

2. A non-federal cost share in a project will establish a legally valid and substantial *non-federal interest* in that project. It is irrelevant how the non-federal cost share participant pays for this -- upfront cash, bank project financing, tax-exempt bonds or a WIFIA loan. On what basis can the current Criteria consider a valid non-federal interest to be a 'federal asset'? Why does that characterization apply *only when WIFIA financing is involved?*

3. Regardless of the characterization of the cost share asset being financed, a WIFIA loan is a *separate federal financial asset* that is recorded on an accrual basis to exclude loan repayment from federal cash revenues, per FCRA law and 1967 Budget Report principles. It is unclear which asset the current Criteria are evaluating – *is it the cost share or the loan?*

Pro-Eligibility New Criteria

1. The current Criteria aren't based on FCRA law or principles, arbitrarily restrict WIFIA statutory eligibility and fail to comply with the 2020 Congressional Directive. They must be replaced.

2. The New Criteria are solidly based on FCRA law and the principles in the 1967 Budget Report. As such, they can be stated as clear and explicit statutory criteria, not opaque bureaucratic questions.

3. The New Criteria include the basic requirement that the borrower is a non-federal entity with a non-federal source of repayment. Two additional criteria establish that the WIFIA loan is financing a valid non-federal interest in a project.

4. The two additional criteria are that the non-federal borrower (1) receives value from its non-federal interest commensurate with its cost of the WIFIA loan, and (2) has undertaken the WIFIA loan repayment obligation independently of any federal participant in the project. Compliance will explicitly confirm FCRA accrual treatment for the WIFIA loan and should be straightforward for eligible loan applicants.