



May 6, 2019

Andrew Sawyers, Director  
Office of Wastewater Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Andrew:

Thank you for meeting with me and members of the Council of Infrastructure Financing Authorities (CIFA) on March 1, 2019, and our subsequent conversations regarding implementation of provisions in America's Water Infrastructure Act that streamline access to financing through the Water Infrastructure Finance and Innovation Act (WIFIA) program for the State Revolving Funds (SRFs).

At your request, CIFA has identified key policy issues that we believe are essential to the successful implementation of WIFIA for SRFs, now commonly referred to as SWIFIA. Our positions on these issues are founded on the proven policy framework that has made the Clean Water and Drinking Water State Revolving Funds the nation's premier programs for providing affordable financing for water infrastructure that protects public health and the environment. These issues also reflect basic principles that recognize the unique nature of the SRFs as established pooled loan programs that finance water projects as opposed to a municipal utility that needs financing to undertake construction of a water project.

CIFA offers these policy issues to help frame future discussions. We recognize that some of these issues may be beyond the purview of the U.S. Environmental Protection Agency (EPA) and may require a change to federal law or policies established by other federal agencies. In those cases, it will be important for EPA to clearly identify the specific law, rule or guidance that prevents adoption or implementation of a policy principle.

Successful implementation of SWIFIA will require agreement on the policy framework and a continued spirit of collaboration which has become the hallmark of the SRF's long-standing, state-federal partnership. CIFA's leadership and members are fully committed to working with you and the WIFIA team to achieve that goal.

Thank you again for your support of State Revolving Funds.

Sincerely,

Jeff Freeman  
Executive Director, Minnesota Public Facilities Authority  
CIFA President

CIFA Board of Directors, Officers:

Jeff Freeman, Minnesota Public Facilities Authority, President  
Kim Colson, North Carolina Department of Environmental Quality, Treasurer  
Jim McGoff, Indiana Financing Authority, Secretary  
Mark Bennett, Arkansas Natural Resources Commission, Past President

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EPA Region 8: Mike Perkovich, South Dakota Department of Environment & Natural Resources  
EPA Region 9: Patricia Incognito, Water Infrastructure Financing Authority of Arizona  
EPA Region 10: Jeff Nejedly, Washington State Department of Ecology  
Anne Burger Entrekin, Hilltop Securities

cc: Raffael Stein, Director, Water Infrastructure Division  
George Ames, Chief, Clean Water State Revolving Fund Branch  
Jorianne Jernberg, WIFIA Program Director



## **Policy Issues for Implementation of SWIFIA**

These policy issues apply to loans from both traditional WIFIA and WIFIA for SRFs (SWIFIA) for the Clean Water and Drinking Water State Revolving Funds.

### **Security and Credit Terms**

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#### **Modifications of the Master Indenture**

SRFs should not be required to modify an existing master indenture as a condition of a SWIFIA loan.

A master indenture or master resolution states the general terms and conditions under which an SRF can issue bonds. Typically, an SRF will enter into a supplemental indenture for each bond issued under the terms of the master indenture.

Requiring changes to an SRF's existing master indenture can change the fundamental nature of an SRF's leveraging structure, potentially limiting future options for leveraging which would limit future capacity to make loans. In addition, the requisite consents to amend an SRF's master indenture - including bondholder consents - are complex and difficult to achieve.

#### **Consent Rights**

SRFs should not be required to provide consent rights to the Federal government that are inconsistent with other bondholders as a condition of a SWIFIA loan.

Consent rights would give the Federal government the power to approve or disapprove changes to the master indenture, essentially turning over control of decisions on leveraging to the Federal government for the life of the SWIFIA loan. Providing consent rights to future unknown administrations creates uncertainty for current and future bondholders.

#### **Parity**

If a SWIFIA loan is on parity with other SRF debt, the Federal government should be on parity with other bondholders in the master indenture.

The Federal government should accept the same terms and conditions as other bond holders under the master indenture. Granting the federal government additional rights may be problematic from a legal standpoint and could impair the ability of an SRF to leverage in the future.

#### **Springing Lien**

If a SWIFIA loan is subordinate to other SRF debt, a SWIFIA loan should not spring to parity with senior bondholders in the event of a bankruptcy.

Allowing a subordinate SWIFIA loan to gain parity with senior debt may create uncertainty in the markets and reduce attractiveness of investment in SRFs.

## **Asset Coverage Ratio**

SRFs should not be required to provide an asset coverage ratio or any additional coverage requirements beyond what is required by rating agencies and other bondholders.

Generally, an asset or other additional coverage requirement could be inconsistent with an SRF program that is secured by the full faith and credit of local government unit borrowers. Any additional coverage requirements could limit the capacity of the SRFs, reducing future loan volume.

## **Applicant Evaluation**

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### **Environmental Reviews**

The SRF's EPA-approved State Environmental Review Process (SERP) should satisfy all environmental compliance requirements for a SWIFIA loan, including a National Environmental Policy Act (NEPA) determination by EPA.

Requiring additional environmental reviews is duplicative and unnecessary.

### **Engineering Reviews**

The SRF's state engineering review process should satisfy all engineering review requirements for a SWIFIA loan.

Requiring an additional engineering review is duplicative and unnecessary.

### **Financial Reviews**

No additional financial review should be required for SRF projects funded through a SWIFIA loan.

SRFs have a long history of creditworthiness and established, proven underwriting standards. Expending resources for additional financial review of projects funded by a SWIFIA loan is an unnecessary cost.

## **Funding**

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### **Programmatic Funding**

SRFs should have the flexibility to use WIFIA loans to fund any eligible project in their program during the five-year draw down period.

Providing this flexibility will allow projects to move expeditiously to construction, which will enhance program capacity, increase efficiency, reduce borrowing costs, help ensure compliance with other spending requirements and achieve programmatic goals

### **Project Funding**

SRFs should be allowed to use 100% of WIFIA funding to fund the full cost of a project.

Allowing SRFs to fund 100% of the cost of a project will ensure federal funding is managed efficiently and effectively, ensuring projects can move forward as funding becomes available.

## **Project Management**

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### **Project Monitoring and Reporting**

SRFs existing monitoring and reporting procedures should be used for WIFIA funded projects.