

PFAS associated with consumer product use including information about potentially highly exposed population groups, and potential adverse human health effects informed by toxicological data sources. The Commission seeks comment on all significant aspects of this issue, including but not limited to the following questions.

#### *Use or Potential Use of PFAS in Consumer Products*

1. Please provide information about the definition of PFAS, including which chemical substances should be considered a perfluoroalkyl or polyfluoroalkyl substance, which chemical substances should be excluded from consideration as a PFAS, and which PFAS are considered in commerce.

2. Please identify specific PFAS potentially used or present in consumer products that are not already included in the contract report and related supporting files. For each PFAS chemical identified, specify relevant consumer product(s) and/or use categories.

3. Please provide information about which specific PFAS the CPSC should prioritize in assessments of potential uses or presence of PFAS in consumer products.

4. Please provide information about which specific consumer products CPSC should prioritize in assessments of potential uses or presence of PFAS.

5. Please provide information about consumer products or materials used in consumer products that may be sources of PFAS.

5a. For intentional uses of PFAS, please provide information on: Chemical identity and physical form (solid, liquid, gas, semi-solid); Functional purpose of the PFAS; and measurements or estimates of levels/concentration of PFAS used in consumer products.

5b. Where PFAS may be present in consumer products other than for intentional, functional uses (such as manufacturing or environmental contaminants), please provide information on sources of contaminants; chemical identity and physical form; degradation of substances or materials in consumer products to PFAS; and measurements or estimates of levels/concentration of PFAS in consumer products other than from intentional uses.

#### *Potential Human Exposures to PFAS Associated With Consumer Products Use, Including Information About Potentially Highly Exposed Population Groups*

6. Please provide information related to the emission of PFAS from consumer products into the indoor environment. For example, studies or data that estimate emission rates or mass transfer parameters of PFAS chemicals from consumer products or materials.

7. Please provide information related to the migration of PFAS from consumer products into saliva, gastrointestinal fluid, or skin. For example, studies or data that estimate migration rates into biological fluids or surfaces based on sustained contact time.

8. Please provide information about the potential for exposure and risk from presence of PFAS in consumer products (including contact exposures from direct use of consumer products and mediated exposures such as through emission of PFAS from products to surfaces, indoor dust, or indoor air). Please provide:

8a. Data related to specific exposure pathways from consumer product sources and associated data or estimates of occurrence of PFAS in environmental media;

8b. Data on measurements or estimates of PFAS intake, uptake, clearance, half-life, or occurrence in people (biomonitoring); and

8c. Data on the relative source contribution of consumer product(s) or ingestion of indoor dust, or inhalation of indoor air compared with other relevant sources such as ingestion of drinking water or ingestion of food associated with estimates of aggregate exposures.

9. Please provide information about population groups that may use certain consumer products for a greater than average magnitude, frequency, or duration based on habits, practices, and characteristics specific to that population group.

#### *Potential Adverse Human Health Effects Informed by Toxicological Data*

10. Please provide reports and underlying data for data sources that could inform whether individual PFAS or subclasses or categories of PFAS have potential for adverse human health effects. This includes human or animal studies that report the relationship between known exposures and observed effects. This also includes new approach methodology studies such as in-vitro assays or in-silico predictions that report the relationship between known exposures and observed biological activities related to health effects.

11. Please provide information on additional sources of data and other

information that CPSC should consider that are not already included or mentioned in the contract report and associated data files.

If you wish to submit confidential information in response to this RFI, please follow the instructions in the **ADDRESSES** section above.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

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## **DEPARTMENT OF DEFENSE**

### **Department of the Army, U.S. Army Corps of Engineers**

#### **Notice of Funding Availability for Applications for Credit Assistance Under the Corps Water Infrastructure Financing Program**

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense (DoD).

**ACTION:** Notice of funding availability.

**SUMMARY:** The Corps Water Infrastructure Financing Program (CWIFP) is the U.S. Army Corps of Engineers' (Corps) new credit assistance program for non-federal dam safety projects. Through the Consolidated Appropriations Act of 2021, the Infrastructure Investment and Jobs Act, and the Consolidated Appropriations Act of 2022, CWIFP has been provided \$81 million in budget authority. The purpose of this Notice of Funding Availability (NOFA) is to solicit preliminary applications from prospective borrowers seeking credit assistance from the Corps under CWIFP. The Corps will evaluate and select projects using selection criteria as further described in this NOFA.

**DATES:** The preliminary application submittal period begins today and ends at 11:59 p.m. Eastern Standard Time on December 19, 2023.

**ADDRESSES:** Prospective borrowers should submit all preliminary applications (OMB Control Number 0710–0026) electronically via the Corps online application portal, located at: <https://CWIFPapp.usace.army.mil>. After registering within the application portal, prospective borrowers will be able to securely provide all required information for the preliminary application. If a prospective borrower has any questions or needs assistance, they should contact [CWIFP@usace.army.mil](mailto:CWIFP@usace.army.mil).

**FOR FURTHER INFORMATION CONTACT:** Nathan Campbell at 651–219–2963 or by

email at [nathan.j.campbell@usace.army.mil](mailto:nathan.j.campbell@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** This NOFA discusses threshold and selection criteria for the funding announced by this NOFA, explains factors for budgetary screening criteria, and outlines the process that prospective borrowers should follow to be considered for credit assistance made available for this funding round.

For a project to be considered during a selection round, CWIFP application materials must be submitted via the online application portal prior to the corresponding deadline listed in the Dates section. Section V. Preliminary Applications and Applications of this NOFA provides additional details on the preliminary application's content. CWIFP has recently held webinars to give interested parties the opportunity to ask CWIFP staff questions about the preliminary application and the program. A video recording and copy of the webinar, as well as the schedule and registration instructions for any future webinars, can be found on the CWIFP website: <http://www.usace.army.mil/CWIFP>.

Prospective borrowers with questions about the program or who have interest in meeting with the CWIFP staff may send a request to [CWIFP@usace.army.mil](mailto:CWIFP@usace.army.mil). The Corps intends to meet with all prospective borrowers interested in discussing the program, but only prior to submission of a request under this NOFA.

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## I. Background

Congress enacted the Water Infrastructure Finance and Innovation Act (WIFIA) statute as part of the Water Resources Reform and Development Act of 2014 (WRRDA). Codified in Chapter 52 of Title 33, U.S. Code (Sections 3901–3914), the WIFIA statute authorizes a federal credit program for water infrastructure projects to be administered by the Corps. The WIFIA statute authorizes the Corps to provide federal credit assistance in the form of secured (direct) loans or loan guarantees for eligible water infrastructure projects.

CWIFP has been developed to accelerate non-federal investments in water resources infrastructure by providing credit assistance to

creditworthy borrowers. CWIFP facilitates local investment in non-federal dam safety projects that enhance community resilience to flooding, promotes economic prosperity, and improves environmental quality.

## II. Program Funding

Congress appropriated \$81 million in funding to cover the subsidy cost of providing WIFIA credit assistance. The subsidy is the estimated present value of the cash flows to and from the Government, adjusted for deviations such as defaults, prepayments, and other factors.

## III. Eligibility Requirements

The WIFIA statute (33 U.S.C. Ch. 52)<sup>1</sup> and CWIFP implementing rules (33 CFR 386)<sup>2</sup> set forth eligibility requirements for prospective borrowers, projects, and project costs.

### A. Eligible Entities Who May Apply

Prospective borrowers must be one of the following in order to be eligible for CWIFP credit assistance:

- (i) A corporation;
- (ii) A partnership;
- (iii) A joint venture;
- (iv) A trust;
- (v) A State, or local governmental entity, agency, or instrumentality;
- (vi) A Tribal government or consortium of Tribal governments; or
- (vii) A state infrastructure financing authority.

### B. Project Eligibility

Funding appropriated by Congress and made available under this NOFA is limited to safety projects to maintain, upgrade, and repair dams identified in the National Inventory of Dams (<https://nid.sec.usace.army.mil/>) with a primary owner type of State, Tribal government, local government, public utility, or private (referred to here after as “non-Federal dams”).

Dam removals are eligible to receive CWIFP credit assistance. Requests may also be made for a combination of projects described above, provided that a single application is submitted for the combination of projects and that the requested credit assistance is secured by a common security pledge.

### C. Eligible Costs

As defined under 33 U.S.C. 3906 eligible project costs are costs associated with the following activities:

<sup>1</sup> <https://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter52&edition=prelim>.

<sup>2</sup> <https://www.federalregister.gov/documents/2023/05/22/2023-10520/credit-assistance-and-related-fees-for-water-resources-infrastructure-projects>.

(i) Development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities.

(ii) Construction, reconstruction, rehabilitation, and replacement activities.

(iii) Acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(iv) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Fees charged by the Corps to the borrower in connection with obtaining CWIFP credit assistance may be considered as part of eligible project costs as permitted under 33 U.S.C. 3908(b)(7).

Proceeds from the CWIFP credit assistance shall not be utilized to provide cash contributions to the Corps for project-related costs, except for such fees described in Section VI Fees.

### D. Threshold Requirements

(i) To be eligible to receive Federal credit assistance under this part, a project shall meet the following threshold criteria:

a. The project and obligor shall be creditworthy; the Corps will assess the financing plan to ensure that the project and borrower are creditworthy. Considerations will include relevant factors such as the dedicated revenue sources that will secure or fund the project obligations; the financial assumptions upon which the project is based; and the financial soundness and credit history of the obligor.

b. The project sponsor shall submit a project application to the Secretary;

c. A project shall have eligible project costs that are reasonably anticipated to equal or exceed \$20 million;

d. Project financing shall be repayable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the project; shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and may have a lien on revenues subject to any lien securing project obligations;

e. In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, or a Tribal government or consortium of Tribal governments, the project that the entity is undertaking shall be publicly sponsored;

f. The applicant shall have developed an operations and maintenance plan that identifies adequate revenues to operate, maintain, and repair the project during its useful life; and

g. Be a non-federal dam safety project, including dam removal, and be for flood damage reduction, hurricane and storm damage reduction, environmental restoration, coastal or inland harbor navigation improvement, or inland and intracoastal waterways navigation improvement that the Secretary determines is technically sound, economically justified, and environmentally acceptable.

#### E. Federal Requirements

All projects receiving credit assistance under this part shall comply with all applicable laws and regulations, including but not limited to the following:

- (i) Environmental authorities:
  - a. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*;
  - b. Archeological and Historic Preservation Act, 16 U.S.C. 469–469c;
  - c. Clean Air Act, 42 U.S.C. 7401 *et seq.*;
  - d. Clean Water Act, 33 U.S.C. 1251 *et seq.*;
  - e. Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*;
  - f. Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*;
  - g. Endangered Species Act, 16 U.S.C. 1531 *et seq.*;
  - h. Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, Executive Order 12898, 59 FR 7629, February 16, 1994;
  - i. Floodplain Management, Executive Order 11988, as amended by Executive Order 13690;
  - j. Protection of Wetlands, Executive Order 11990, 3 CFR, 1977 Comp., p. 121, as amended by Executive Order 12608, 3 CFR, 1987 Comp., p. 245
  - k. Farmland Protection Policy Act, 7 U.S.C. 4201 *et seq.*;
  - l. Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, as amended;
  - m. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*;
  - n. National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*;
  - o. Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; and

p. Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq.*

(ii) Economic and miscellaneous authorities:

a. Debarment and Suspension, Executive Order 12549, 51 FR 6370, February 21, 1986;

b. New Restrictions on Lobbying, 31 U.S.C. 1352;

c. Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under 42 U.S.C. 7606 and 33 U.S.C. 1368, and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799; and

d. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*

(iii) Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities:

a. Age Discrimination Act, 42 U.S.C. 6101 *et seq.*;

b. Equal Employment Opportunity, Executive Order 11246, 30 FR 12319, September 28, 1965;

c. Section 504 of the Rehabilitation Act, 29 U.S.C. 794, supplemented by Executive Orders 11914, 3 CFR, 1976 Comp., p. 117, and 11250, 3 CFR, 1964–1965 Comp., p. 351; and

d. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*

(iv) Budgetary Screening Criteria:

To comply with Water Infrastructure Finance and Innovation Program Account heading in the Energy and Water Development and Related Agencies Appropriations Act, 2021 (Pub. L. 116–260<sup>3</sup>), a project seeking CWIFP financing will be assessed using two initial screening questions and sixteen scoring factors. These questions will help the Office of Management and Budget (OMB) and the Army Corps of Engineers certify compliance with budgetary scoring rules for lending to non-Federal entities, a process that will be conducted in parallel to the Corps' pre-application evaluation process outlined in this NOFA. As articulated in Public Law 116–260, only projects that are certified in advance in writing by the Director of OMB and the Secretary of the Army as complying with these criteria are eligible to receive CWIFP credit assistance. For example, a project authorized by an Act of Congress to be built by the Army Corps of Engineers of the Bureau of Reclamation is ineligible for WIFIA financing. However, a project that may connect to, or be tangentially related, to such a project, may be eligible depending on the factual circumstances. Furthermore, a project at

<sup>3</sup> <https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf>.

a local municipal dam might not be deemed ineligible simply because it was originally built by the Army Corps of Engineers or Bureau of Reclamation. Such questions will need to be resolved on a case-by-case basis. The questions may be found in **Federal Register** publication: Water Infrastructure Finance and Innovation Act Program (WIFIA) Criteria Pursuant to Public Law 116–94<sup>4</sup> 85 FR 39189,<sup>5</sup> June 30, 2020. The Corps encourages prospective borrowers to review the screening criteria and provide sufficient information in the preliminary application to facilitate OMB and Army review of the prospective project considering the screening criteria.

#### IV. Types of Credit Assistance and Maximum Credit Assistance

Two types of credit instruments are permitted under the WIFIA statute: secured (direct) loans and loan guarantees. General rules concerning the terms governing these credit instruments appear at 33 U.S.C. 3908 and 3909. The maximum amount of CWIFP credit assistance to a project is 49 percent of eligible project costs or up to 80 percent for projects serving economically disadvantaged communities.

#### V. Preliminary Applications and Applications

This section primarily describes the preliminary application.

##### A. Preliminary Application

Prospective borrowers seeking CWIFP credit assistance must submit a preliminary application describing the project fundamentals and addressing the CWIFP selection criteria.

In the preliminary application, prospective borrowers provide CWIFP with enough information to do the following:

- (i) Validate the eligibility of the prospective borrower and the proposed project,
- (ii) Perform a preliminary creditworthiness assessment,
- (iii) Perform a preliminary technical feasibility analysis, and
- (iv) Evaluate the project against the selection criteria defined in Section VII of this NOFA.

Prospective borrowers should complete the preliminary application electronically via the Corps online application portal, located at <https://>

<sup>4</sup> <https://www.govinfo.gov/content/pkg/PLAW-116publ94/pdf/PLAW-116publ94.pdf>.

<sup>5</sup> <https://www.federalregister.gov/documents/2020/06/30/2020-13889/water-infrastructure-finance-and-innovation-act-program-wifia-criteria-pursuant-to-the-further>.

CWIFPapp.usace.army.mil. The Corps will notify prospective borrowers via email that their preliminary application has been received via the online application portal.

Prospective borrowers can access additional information about the online platform on the CWIFP website: <http://www.usace.army.mil/CWIFP>.

All submitted application materials should stand alone, and additional research by CWIFP will only be conducted in extenuating circumstances.

The preliminary application contains the following six (6) sections:

#### 1. Prospective Borrower Information

In this section of the preliminary application, the prospective borrower describes the entity seeking CWIFP assistance, including its legal name, address, website, employer identification number (EIN), unique entity ID number created in *SAM.gov*, verification of active registration in System for Award Management (SAM) number, and a brief summary of organizational structure.

The prospective borrower must provide a description of the legal authority used to carry out the project and to receive and pledge the revenue stream proposed as their source of repayment. Prospective borrowers must also identify the statutory types under which the project and loan obligor can be categorized. In the case of a project that is undertaken by an entity that is not a Tribal government or consortium of Tribal governments, or a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking must be publicly sponsored. Public sponsorship means that the prospective borrower can demonstrate, to the satisfaction of the Corps, that it has consulted with the affected Tribal, State, or local government in which the project is located, or is otherwise affected by the project, and that such government supports the proposed project. A prospective borrower can show support by including a certified letter signed by the approving Tribal, State, or municipal department or similar agency; governor, mayor or other similar designated authority; statute or local ordinance, or any other means by which government approval can be evidenced.

At the end of this section, prospective borrowers will be asked to provide anticipated dates for (1) the completion of a full application (in the event they were invited to apply after review of their preliminary application, and (2)

loan closure (in the event the full application was approved).

#### 2. Project Plan

In this section of the preliminary application, the prospective borrower provides a general description of the project and its purpose, location, the localities and population served, environmental impacts, delivery method, project completion schedule, eligible costs, and the requested loan amount.

The prospective borrower must specify whether the project has been federally authorized by Congress and whether the project team has previously consulted with any Corps Districts and/or Divisions. If so, the prospective borrower must specify the Corps point of contact(s). Consistent with FR 39189, a project authorized by an Act of Congress to be built by the Army Corps of Engineers or Bureau of Reclamation is ineligible for WIFIA financing. However, a project that may connect to, or be tangentially related to, such a project, may be eligible depending on the factual circumstances (e.g., a project to upgrade a water distribution system that is connected to an Army Corps of Engineers or Bureau of Reclamation constructed water source may be eligible for WIFIA financing in some circumstances). Furthermore, a project at a local municipal facility might not be deemed ineligible simply because it was originally built by the Army Corps of Engineers or Bureau of Reclamation. Such questions will need to be resolved on a case-by-case basis.

The prospective borrower should summarize other relevant information that could affect the development of the project, such as community outreach, environmental review, permits, operations and maintenance agreement plan, and other approvals or issues that are integral to the project's development.

The prospective borrower also should provide the following as attachments: (1) A map of the project location, and (2) all applicable technical reports for each project, addressing the project(s) scope, cost, schedule, contingency plans, and status of project design (including consideration for cost overruns).

#### 3. Financing Plan

In this section of the preliminary application, the prospective borrower indicates the amount and terms of the requested CWIFP credit assistance, including the assumed disbursement period and repayment term of the loan, the anticipated amortization structure,

and whether interest is expected to capitalize during construction.

In addition, the prospective borrower should detail the proposed sources and uses of funds for the project. The discussion of proposed financing should identify the source(s) of revenue or other security that would be pledged to the CWIFP assistance. As part of the description of its financial condition, the prospective borrower should include its year-end audited financial statements for the past two years, as available, or comprehensive financial reports, as applicable.

Additionally, the prospective borrower must describe the credit characteristics of the proposed credit assistance, how the CWIFP assistance will receive an investment grade rating, as well as the anticipated rating on the CWIFP assistance. Whenever possible, the prospective borrower should include existing credit ratings on the proposed source of repayment.

The prospective borrower should also include a summary financial pro forma, presented in a formula-based Microsoft Excel document, which presents key revenue, expense, and debt repayment assumptions for the revenue pledged to repay the CWIFP loan for the tenor of the proposed credit assistance. The financial pro forma should include all the following items:

- Sources of revenue
- Operation & Maintenance expenses
- Dedicated source(s) of repayment
- Capital expenditures
- Debt service payments and reserve transfers by funding source (including the CWIFP credit assistance)
- Debt balances by funding source
- Projected debt service coverage ratios for total existing debt and the CWIFP debt

#### 4. Selection Criteria

In this section of the preliminary application, the prospective borrower describes the potential policy benefits achieved using CWIFP assistance with respect to each of the CWIFP selection criteria. These criteria are described in Section VII. Selection Criteria of this NOFA.

#### 5. Contact Information

In this section of the preliminary application, the prospective borrower identifies primary and secondary points of contact with whom CWIFP should communicate regarding the preliminary application. To complete the Corps' evaluation, CWIFP staff may contact a prospective borrower regarding specific information in the preliminary application.

## 6. Federal Requirements and Certification

In this section of the preliminary application, the prospective borrower certifies that it will abide by all applicable laws and regulations, including NEPA, the American Iron and Steel requirements, the Build America, Buy America Act, and Federal labor standards, among others, if selected to receive funding. The prospective borrower also certifies that the information provided in the preliminary application is true, to the best of the prospective borrower's knowledge and belief after due inquiry, and that the prospective borrower has not omitted any material facts.

### B. Application

After the Corps concludes its evaluation of the preliminary application, prospective borrowers will be invited to apply based on the scoring of the selection criteria and preliminary evaluation of creditworthiness and feasibility, while taking into consideration geographic and project type diversity.

The purpose of the Corps' preliminary application review is to pre-screen prospective borrowers to the extent practicable. An invitation to apply for CWIFP credit assistance does not guarantee the Corps' approval or represent an obligation by the Corps to enter into a credit agreement, which remains subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to the Corps, and the availability of funds at the time at which all necessary recommendations and evaluations have been completed. Detailed informational needs for the application are listed in the application form (OMB Control Number 0710-0026).

Final and completed applications should be received by CWIFP within 365 days of the invitation to apply, but the Corps may extend the deadline on a case-by-case basis if the project schedule in the preliminary application or other applicable factors signal that additional time might be needed.

### VI. Fees

There is no fee to submit a preliminary application.

For projects invited to apply for credit assistance, the Corps incurs both internal administrative costs (staffing, program support contracts, etc.) as well as costs associated with conducting engineering reviews and retaining expert firms, including financial and legal services in the field of municipal

and project finance, to assist in the underwriting of the federal credit instrument.

As a result, each invited applicant will be required to submit, concurrent with its application, an application fee of \$25,000, this application fee will be waived for public entities serving small communities or economically disadvantaged communities. Applications will not be evaluated until the application fee is paid, if applicable. This fee will be credited toward final payment of a Transaction Processing Fee, which is used to pay the remaining portion of the Corps' cost of processing the application for credit assistance. In the event a final credit agreement is not executed, the borrower will be required to reimburse the Corps for the costs incurred.

As noted above, the Corps will only invite projects to apply if it anticipates a high probability of proceeding to closing.

### VII. Selection Criteria

Prior to consideration under the Selection Criteria, a project must first satisfy all of the threshold criteria (also outlined in Section III(D)):

a. The project and obligor shall be creditworthy; the Corps will assess the financing plan to ensure that the project and borrower are creditworthy. Considerations will include relevant factors such as the dedicated revenue sources that will secure or fund the project obligations; the financial assumptions upon which the project is based; and the financial soundness and credit history of the obligor.

b. The project sponsor shall submit a project application to the Secretary;

c. A project shall have eligible project costs that are reasonably anticipated to equal or exceed \$20 million;

d. Project financing shall be repayable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the project; shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and may have a lien on revenues subject to any lien securing project obligations;

e. In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, or a Tribal government or consortium of Tribal governments, the project that the entity is undertaking shall be publicly sponsored;

f. The applicant shall have developed an operations and maintenance plan that identifies adequate revenues to

operate, maintain, and repair the project during its useful life; and

g. Be a non-federal dam safety project, including dam removal, and be for flood damage reduction, hurricane and storm damage reduction, environmental restoration, coastal or inland harbor navigation improvement, or inland and intracoastal waterways navigation improvement that the Secretary determines is technically sound, economically justified, and environmentally acceptable.

### CWIFP Priorities

This section specifies the process that the Corps will use to evaluate preliminary applications, (only after satisfaction of the threshold criteria as described in the section above are met) and select projects to apply for CWIFP credit assistance.

There are 14 total CWIFP selection criteria that will be considered with this NOFA. 12 are identified in the implementation rules (33 CFR 386 Section O); criterion (L) was added to ensure compliance with FR 39189 and criterion (N) was added to reflect proper consideration for dam removal projects in the selection process. The following criteria contain weights that combine to make up a total score out of 100 points: (A), (C), (D), (E), (F), (G), (H), (I), (J), (K), and (N). Overall scores will help inform the selection committee's deliberations within the overall program framework. Criterion (B), Extent of Public or Private Financing, is not assigned a selection criteria weight as it is considered part of the threshold criteria. Criterion (L), Project is Non-Federally Owned, Operated or Maintained, is not assigned a weight as it is considered part of the threshold criteria. Criterion (M), Amount of Budget Authority, is evaluated in the context of an entire cohort or NOFA round given the amount of funding available, thus is not provided a weight.

(A) *40 points*: The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public benefits, such as—(i) the reduction of flood risk; (ii) the improvement of water quality and quantity, including aquifer recharge; (iii) the protection of drinking water, including source water protection; (iv) the support of domestic or international commerce; and (v) the restoration of aquatic ecosystem structures.

The Corps will assess the risk associated with the dam by considering the consequences (e.g., the extent of the loss of life, economic losses, and damage to important environmental resources or cultural sites) and the

likelihood of dam failure as defined below; projects at higher risk will receive a greater score:

*Low risk:* low or significant hazard potential combined with a low likelihood of failure; or low hazard potential combined with a medium likelihood of failure.

*Moderate Risk:* low hazard potential combined with a high likelihood of failure; or significant hazard potential combined with medium likelihood of failure; or high hazard potential combined with a Low likelihood of failure.

*High Risk:* high or significant hazard potential combined with a high likelihood of failure; or high hazard potential combined with a medium likelihood of failure.

(B) *0 points:* The extent to which the project financing plan includes public or private financing in addition to WIFIA credit assistance. The Corps will assess this as a threshold criterion for creditworthiness and will assess the financing plan to ensure that the project and borrower are creditworthy. Considerations will include relevant factors such as the dedicated revenue sources that will secure or fund the project obligations; the financial assumptions upon which the project is based; and the financial soundness and credit history of the obligor.

(C) *5 points:* The likelihood that WIFIA credit assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed

(D) *1 point:* The extent to which the project uses new or innovative approaches.

(E) *10 points:* The extent to which the project—(i) protects against extreme weather events, such as floods or hurricanes; or (ii) helps maintain or protect the environment. The Corps will assess the risk associated with the dam and how the proposed project minimizes that risk by considering the ability of the dam to pass the Inflow Design Flood (IDF) which is used as a proxy to evaluate the probability of an event occurring (*i.e.*, dams not able to pass the IDF are more likely to have failures). The scoring will favor those projects that are increasing their capacity to successfully pass the IDF, which includes dam removal.

(F) *1 point:* The extent to which a project serves regions with significant clean energy exploration, development, or production areas.

(G) *5 points:* The extent to which a project serves regions with significant water resource challenges, including the need to address—(i) water quality concerns in areas of regional, national,

or international significance; (ii) water quantity concerns related to groundwater, surface water, or other water sources; (iii) significant flood risk; (iv) water resource challenges identified in existing regional, State, or multistate agreements; or (v) water resources with exceptional recreational value or ecological importance.

(H) *1 point:* The extent to which the project addresses identified municipal, State, or regional priorities.

(I) *5 points:* The readiness of the project to proceed toward development, including a demonstration by the obligor that there is a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under WIFIA.

(J) *1 point:* The extent to which WIFIA credit assistance reduces the overall Federal contributions to the project. As noted above, a project is not eligible to receive CWIFP credit assistance if it is a congressionally authorized federal project authorized by an Act of Congress to be built by the Army Corps of Engineers or the Bureau of Reclamation.

(K) *17 points:* The extent to which the project serves economically disadvantaged communities and spurs economic opportunity for, and minimally adversely impacts, disadvantaged communities and their populations, which meet at least one of the following criteria: (i) low-income (the area has a per capita income of 80 percent or less of the national average), (ii) unemployment rate above national average (the area has an unemployment rate that is, for the most recent 24-month period for which data are available, at least 1 percent greater than the national average unemployment rate), (iii) Indian country as defined in 18 U.S.C. 1151 or in the proximity of an Alaska Native Village, (iv) U.S. Territories, or (v) identified as disadvantaged by the Climate and Economic Justice Screening Tool (developed by the Council on Environmental Quality and currently available at <https://screeningtool.geoplatform.gov>).

(L) *0 points:* The project is non-federally owned, operated or maintained. This criterion, which is being treated as a threshold criterion, was added for the purposes of this NOFA to be consistent with FR 39189. FR 39189 indicates that a project authorized by an Act of Congress to be built by the Army Corps of Engineers or Bureau of Reclamation is ineligible for WIFIA financing. However, a project that may connect to, or be tangentially

related to, such a project, may be eligible depending on the factual circumstances (*e.g.*, a project to upgrade a water distribution system that is connected to an Army Corps of Engineers or Bureau of Reclamation constructed water source may be eligible for WIFIA financing in some circumstances). Furthermore, a project at a local municipal facility might not be deemed ineligible simply because it was originally built by the Army Corps of Engineers or Bureau of Reclamation. Such questions will need to be resolved on a case-by-case basis.

(M) *0 points:* The amount of budget authority required to fund the Federal credit instrument made available under this chapter. *Note:* Corps will use this to verify that there will be sufficient budget authority to invite an applicant to apply for credit assistance.

(N) *14 points:* The project is for dam removal. This selection criterion was added for the purposes of this NOFA to ensure proper consideration for dam removal projects in the selection process.

In addition to the selection criteria score, the Corps is required by 33 U.S.C. 3902(a) to “ensure a diversity of project types and geographical locations.”

Following analysis by the Corps staff, a final score is calculated for each project. Projects will be selected in order of score, subject to the requirement to ensure a diversity of project types and geographical locations.

(Authority: 33 U.S.C. 3901–3914, 33 CFR 386)

**Michael L. Connor,**

*Assistant Secretary of the Army (Civil Works).*

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## DEPARTMENT OF ENERGY

### Notice of Availability of Interim Guidance on Packaging, Transportation, Receipt, Management, Short-Term and Long-Term Storage of Elemental Mercury

**AGENCY:** Office of Environmental Management, U.S. Department of Energy.

**ACTION:** Notice of availability of guidance.

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**SUMMARY:** The U.S. Department of Energy (DOE or the Department) gives notice of interim guidance *U.S. Department of Energy Interim Guidance on Packaging, Transportation, Receipt, Management, Short-Term and Long-Term Storage of Elemental Mercury*. The