
Adding the Limited Buydown to WIFIA Loans.

The EPA's WIFIA loan program offers several interest rate management features that are highly beneficial for large-scale infrastructure financings, including a U.S. Treasury-based fixed-rate lock for construction and permanent drawdowns, post-execution rate resets until draw, and no-penalty cancellation and prepayment.

All are enabled, directly or indirectly, by a statutory framework that WIFIA shares with its predecessor, the DOT's TIFIA program, and a recent successor, the DOE's CIFIA program.

But one loan feature is missing from WIFIA's specific statute – a limited interest rate buydown. The limited buydown allows the program to lower, within specified limits, a loan's execution interest rate to what it would have been on the day the loan's application was accepted. Even at a well-run program, there will inevitably be a significant amount of time between loan application acceptance and final execution for complex infrastructure financings. Treasury rates can easily rise during this time, especially in the current economic environment, and that introduces a big element of uncertainty into the cost of the project's long-term financing. A limited buydown enables the program to help mitigate this pre-execution interest rate risk when it's a factor that could stall project development and construction. Like other interest rate management features, the limited buydown is a useful tool for achieving an infrastructure loan program's core policy objective of enabling and accelerating U.S. public infrastructure renewal.

A limited buydown provision was added to TIFIA's statute in the MAP-21 Act of 2012. The provision, with more specific language, was included in CIFIA's statute when the program was established in 2021 by the Infrastructure Investment and Jobs Act. For both programs, the maximum interest rate reduction is 1.50 percent, which is quite significant in the context of current Treasury rates.

Despite being closely modelled on TIFIA law, WIFIA's statute didn't include a limited buydown provision when the program was established in 2014, nor was it added in subsequent WIFIA-related legislation even though CIFIA's proponents and federal policymakers were clearly aware of the provision's usefulness. It's hard to see why the WIFIA program, which makes extensive and innovative use of all its interest rate provisions, was skipped over in the case of a limited buydown. Perhaps pre-execution interest rate risk is not as an important factor for WIFIA's highly rated public water agencies as it is for TIFIA's project financings or CIFIA's carbon pipeline development?

If that – or something like it – is the reason, adding the limited buydown to WIFIA's statute should now be re-considered for two very different types of potential program borrowers. The provision would be useful for both, albeit also in different ways, and although neither have been frequent WIFIA applicants to date, that may change soon.

The Limited Buydown and CWIFP Loans

The first type of potential borrower will be the large-scale water management and dam projects expected to apply to the Army Corp's WIFIA section, the Corps Water Infrastructure Finance Program (CWIFP). CWIFP has received about $81 million in funding to support about $7.5 billion of loans and is scheduled to start accepting applications in spring 2023.

CWIFP applicants are likely to include complex, multi-party, and multi-jurisdictional project financings for major foundational infrastructure assets. This type of project is closer to TIFIA's toll roads or CIFIA's multi-state pipelines than to WIFIA's municipal water system assets. They have a long development period with many highly uncertain variables, not the least of which is the cost of long-term financing. Bringing everything to the stage where loan agreements can be executed, and construction started, is inherently a lengthy process subject to many risks. In contrast to WIFIA's current post-execution interest rate management features, the limited buydown can help reduce rate risk during this, pre-execution, phase of project development. For many projects, that may be an especially valuable aspect of a CWIFP loan application.

The Limited Buydown and SWIFIA Loans

The second type of borrower that could benefit from a WIFIA limited buydown doesn't directly involve infrastructure projects, but infrastructure lenders – state revolving funds, or SRFs. The sub-optimal levels of leverage at SRFs, especially smaller funds in mostly rural states, have long been recognized, as has the potential for WIFIA loans to help address the issue. As federal funding becomes less certain and increasingly subject to unexpected restrictions or re-allocations (e.g., earmarks in the 2023 Consolidated Appropriations Act), the ability of SRFs to leverage in a flexible, cost-effective way can also become an important tool for state-specific planning and prioritization.

The 2018 SRF-WIN Act proposed several WIFIA loan features designed to encourage more program lending to SRFs, but the ultimate legislative result, SWIFIA, did not include them. Yet, well-designed program loan features are arguably the most effective way to overcome the SRF's reluctance to leverage their portfolios.

A WIFIA limited buydown could encourage smaller, unleveraged SRFs to take the first step towards leverage by providing additional certainty at an early, low-cost stage in the loan application process. The likely maximum interest rate of the executed loan will be set on the day the application is accepted. That's valuable to help the SRFs planning and decision-making with more specific numbers, and perhaps also to visualize how the leverage would work in more concrete terms. If Treasury rates start rising, the application's potential value also becomes intrinsic and measurable. But if the SRF decides to discontinue the process for whatever reason, there are no penalties for withdrawing an application. In effect, the limited buydown makes a WIFIA loan application a small but realizable goal that will potentially improve an SRF's future leverage if the fund decides to go forward, but not cost very much if it does not.

Adding the Limited Buydown to WIFIA's Statute

An amendment that adds a limited buydown provision to WIFIA's statute would be very straightforward. The language can basically be copied from TIFIA law or (even better) from CIFIA's more recent version. And soon there should be proposed legislation to place it in. The Water Infrastructure Finance and Innovation Act Amendments of 2022 will almost certainly be re-introduced in the next Congress. This bill contains budgeting and other clarifications that are especially important for CWIFP's implementation, but the proposed amendments will apply to all WIFIA borrowers.

Notably, an amendment to extend WIFIA's maximum loan term to 55 years is already included. A limited buydown amendment would provide a similar incremental enhancement of WIFIA loan features. Both serve an important role at this stage of WIFIA's development – to expand the program's base of potential borrowers and help accelerate U.S. water infrastructure projects in other, equally critical sectors.

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