SFAA
THE SURETY & FIDELITY ASSOCIATION OF AMERICA

SFAA & NASBP 2024 JOINT LEGISLATIVE FLY-IN

Key Messages

1 Surety bonds provide vital protections for public entities, taxpayers, subcontractors, workers, and suppliers on public construction projects. These protections are required at the federal level through the Miller Act and at the state level through the Little Miller Acts.

2 It is essential to understand that surety bonds lower costs and reduce defaults on construction projects. A recent study by Ernst & Young (EY) found that

- Contractor defaults are more likely to occur on unbonded projects than bonded projects (as much as 10x higher).
- When a default does occur, unbonded construction projects experienced substantially higher costs (85% higher) than bonded projects and take at least 2 times as long to complete.
- Bonded projects cost less than unbonded projects. 75% of public project owners report that surety bonding reduces contractor pricing by an average of 3.2%.

3 Congress should safeguard federal infrastructure investments – water, transportation, energy grid, AND broadband – by requiring surety bonds to protect the Federal Government's financial interest for those entities receiving federal loans and/or grant funds.

The Infrastructure Investment & Jobs Act (IIJA) allocated billions of dollars to critical infrastructure, including $42.5 billion dedicated to broadband expansion through the National Telecommunications and Information Administration's (NTIA) Broadband Equity, Access, and Deployment (BEAD) Program. Recognizing the limitations of Letter of Credit (LOC)-only requirements and the obstacles LOCs pose for small internet service providers (ISPs), NTIA announced in November 2023 that surety bonds could be furnished as an alternative form of security in deployment of broadband infrastructure projects.

The surety industry is working with ISPs and NTIA to create a bond obligation and we encourage other federal agencies involved in broadband infrastructure, including programs administered by the U.S. Department of Agriculture and the FCC to adopt similar practices.

Surety Bond Protections Have Been Required for Over 100 Years

- The Federal Miller Act (40 U.S.C. Section 3131 to 3134) and similar regulatory requirements adopted in all 50 states provide vital financial security to protect public construction projects by assuring contractors are qualified to perform the construction and that a reputable and knowledgeable surety stands ready to complete the job if a contractor fails to perform during the project.
- Bonding ensures that only capable contractors are awarded publicly-funded work, not only preserving precious taxpayer resources and protecting subcontractors, suppliers, and small businesses suppliers should the prime contractor fail to meet its payment obligations but simultaneously ensuring completion of construction and infrastructure projects and providing a degree of certainty in an otherwise risky industry.
- Given the enactment of the $1.2 Trillion Infrastructure Investment & Jobs Act (IIJA), Congress should require bonding to ensure jobs are completed on time and workers are paid.

*All data based on analysis by EY

The Economic Value of Surety Bonds
by Ernst & Young (EY)

10x **Unbonded construction projects are more likely to default** than bonded projects – by as much as 10 times.*

Nearly five times as many construction leaders report **bonded projects are more likely to be completed on time or ahead of schedule** than unbonded projects.*

Bonded projects cost less than unbonded projects. 75% of public project owners report that surety bonding reduces contractor pricing by an average of 3.2%.*

If a contractor defaults on a bonded project, surety companies intervene, **lowering the cost of project completion by 85% and reducing the time to complete by two times.***

* Executive Summary available at ***https://surety.org/wp-content/uploads/2022/11/EY-SFAA-Report-on-economic-value-of-surety-bonding-ES-2022-FINAL-1.pdf***. Full report available at ***https://surety.org/wp-content/uploads/2022/11/surety_protects_2022_report.pdf***

Support H.R. 1740 & S. 2928 Background on WIFIA Bonding

- Bonding on public-private partnership (P3s) projects has been inconsistent. One of the critical financing vehicles, the Water Infrastructure Finance and Innovation Act (WIFIA), should be modernized to include the same payment and performance bonding requirements that Congress recently enacted to protect Transportation Infrastructure Finance and Innovation Act (TIFIA)-financed projects. We urge you to support H.R. 1740 and S. 2928, which aim to do just that.
- H.R. 1740 and S. 2928 clarify that performance and payment bonds are required to protect the public interest on all WIFIA-financed projects, regardless of construction delivery model. Updating the WIFIA program enables the Secretary of the Army or EPA Administrator to require bonding if a state does not have existing applicable requirements for bonding protections.
- SFAA, NASBP and industry partners closed this loophole for the TIFIA program in the IIJA – culminating in a 97-0 vote in the Senate – and are now pursuing H.R. 1740 and S. 2928 to maintain parity between the two funding programs: TIFIA and WIFIA.
- This legislation would be consistent with OMB Regulation 2 CFR 200.325 requiring all federal agencies to protect assets when awarding grants. Agencies can accept the bonding policy of non-federal grant recipients if such policies are sufficient; if not, then performance and payment bonds for 100% of the construction contract price are required.

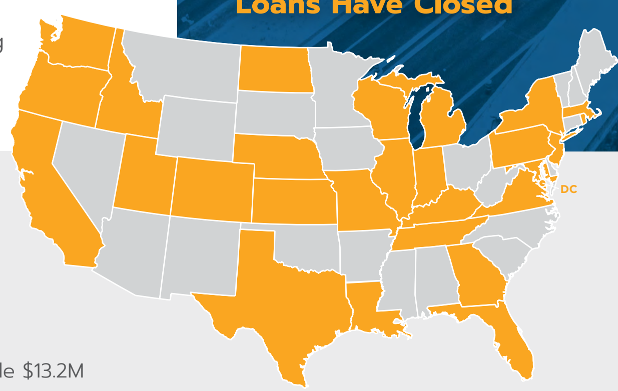
WIFIA Program Background

- Created through the Water Infrastructure Finance Innovation Act of 2014, WIFIA is a Federal credit program administered by the Environmental Protection Agency (EPA) for eligible water and wastewater infrastructure projects.
- To date, WIFIA has closed 120 loans totaling $19 billion in credit assistance – financing $43 billion in water infrastructure projects and creating 143,000 jobs across the country.
- Eligible borrowers include Local, state, and tribal government entities, partnerships and joint ventures, corporations and trusts, and Clean Water and Drinking Water State Revolving Fund (SRF) programs.
- Eligible projects include Projects that are eligible for the Clean Water SRF and the Drinking Water SRF, enhanced energy efficiency projects at drinking water and wastewater facilities, brackish or seawater desalination, aquifer recharge, alternative water supply, and water recycling projects, drought prevention, reduction, or mitigation projects.

Important WIFIA Program Features

- **$20 million: Minimum project size for large communities.**
- **$5 million: Minimum project size for small communities (population of 25,000 or less).**
- **49 percent: Maximum portion of eligible project costs that WIFIA can fund.**
- **35 years: Maximum final maturity date from substantial completion.**
- **Projects must be creditworthy and have a dedicated source of revenue.**
- **NEPA, Davis-Bacon, American Iron and Steel, Build America, Buy America Act, and all other federal cross-cutter provisions apply.**

28 States Where Loans Have Closed



WIFIA Program Highlights

- **King County, WA | Georgetown Wet Weather Treatment Station | 2018**
  WIFIA Loan Amt: $134.5M | Total Project Costs: $275M | Saved King County: $32M
  Jobs Created: 1,400 | Population Served: 175,000
- **City of Pflugerville, TX | Water Treatment Expansion | 2022**
  WIFIA Loan Amt: $52M | Total Project Costs: $106.2M | Saved the City of Pflugerville $13.2M
  Jobs Created: 325 | Population Served: 76,000
- **Poseidon Resources, CA | Carlsbad Desalination Plant Intake Modification and Wetlands Project | 2023 ** P3**
  WIFIA Loan Amt: $170M | Total Project Costs: $386M
  Jobs Created: 1,800 | Population Served: 2.4M
- **Sarasota County, FL | Bee Ridge Facility Expansion & Wastewater Treatment Conversion Project | 2018**
  WIFIA Loan Amt: $105M | Total Project Costs: $214M | Saved Sarasota County: $22M
  Jobs Created: 688 | Population Served: 434,000

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