

Implementing the Bipartisan Infrastructure Law:

EPA's March 2022 guidance on State Revolving
Fund (SRF) Programs



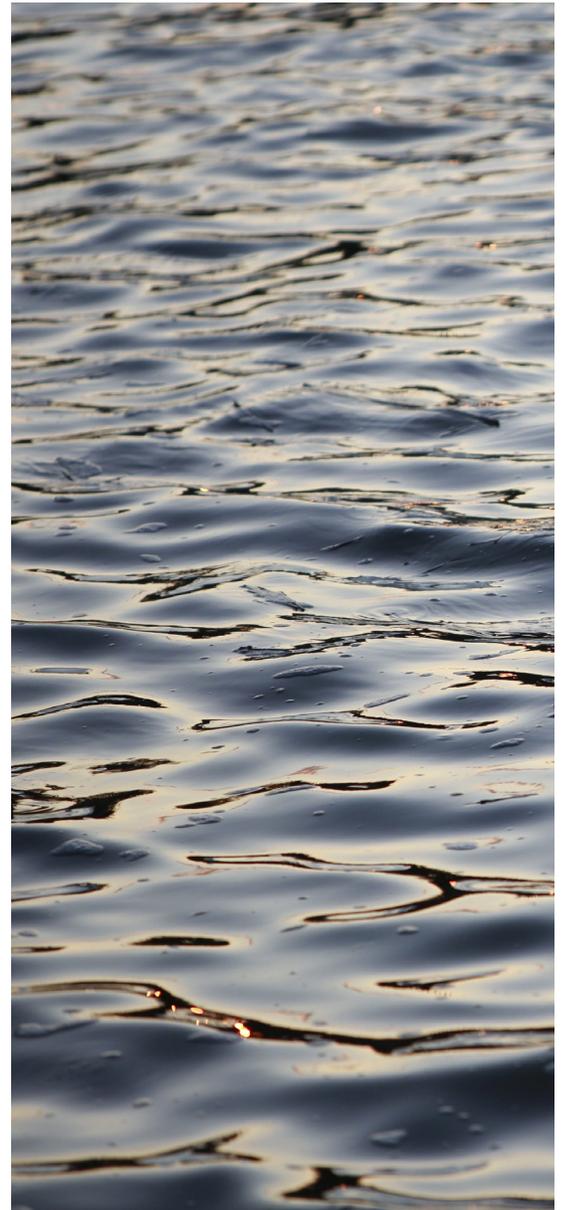
Introduction

Enacted on November 15, 2021, the Infrastructure Investment & Jobs Act, now referred to as the “Bipartisan Infrastructure Law” (BIL) created a \$550 billion supplemental appropriation fund of federal dollars that will spend out over 5 years (FY22-FY26). BIL contained the Senate passed Drinking Water and Wastewater Infrastructure Act of 2021 (S.914) which reauthorized existing programs and created new programs to support drinking and wastewater infrastructure. BIL reauthorized both the Clean Water State Revolving Loan

Fund (CWSRF) as well as the Drinking Water State Revolving Loan Fund (DWSRF) and provided \$11.7 billion in guaranteed funding for each from FY22-FY26. The BIL also makes additional investments through the SRFs in replacing lead service lines and addressing emerging contaminants. On March 8th, the EPA issued a 50+ page Memorandum to states on the Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law. That memorandum is outlined below.

Key Findings

- EPA has interpreted the BIL language to mean that the new, additional subsidization in the programs should be prioritized for **disadvantaged communities**, as defined by the states.
- States retain the right to define affordability criteria and disadvantaged communities, even though EPA has provided much more guidance in this memo on aspects they should consider.
- Although strongly encouraged, the additional subsidization is not limited just to disadvantaged communities and in the case of the CWSRF, additional subsidy could also be provided to other applicants where the rate impacts justify providing such subsidization
- States can define neighborhoods within a system as needing special attention as a basis for providing additional subsidization.





State Revolving Fund Basics

- **SRF Background** – EPA receives annual congressional funding to support the DWSRF and the CWSRF programs and distributes grants to the states based on a formula. States are responsible for the operation of both their CWSRF and DWSRF programs. States provide matching funds equal to 20% of the federal grant to capitalize the SRFs and use their funds primarily to provide loans to cities and other eligible recipients. The loan programs are intended to be sustained through repayment of loans to states, thus creating a continuing source of assistance for other communities. Loans are made at or below market interest rates, including zero interest loans, as determined by the state in negotiation with the applicant.
- **Clean Water State Revolving Fund** – The CWSRF provides assistance in constructing and upgrading publicly owned municipal wastewater treatment plants and related equipment (including stormwater infrastructure), implementing nonpoint pollution management programs, developing and implementing management plans under the National Estuary Program, among many other uses. Generally, eligible loan recipients for CWSRF assistance are any municipal, intermunicipal, interstate, or state agency.
- **Drinking Water State Revolving Fund** – The Safe Drinking Water Act (SDWA) requires public water systems to comply with federal drinking water regulations. Through these regulations, EPA has set standards to control the levels of contaminants in drinking. To help communities meet these federal mandates and to meet the act's public health objectives, Congress created the DWSRF loan program. States use their DWSRFs to provide assistance to public water systems for infrastructure and other drinking water projects.
- **Intended Use Plan** – Every year states are required to develop an "intended use plan" that includes a list of projects that the state intends to fund through the SRFs. IUPs identify the uses and describe how the uses support the goals of the SRF programs. The IUP is subject to public comment and review before being submitted to the EPA for approval.
- **Project Priority List** – A new Priority List is prepared each fiscal year and included in the IUP. The Priority List includes a listing of all potential projects or segments of projects that have not yet been funded, and that have submitted the required pre-application documents.



EPA Memo on Implementation of CWSRF and DWSRF in the BIL

When the memo says “BIL” funding, it is referring to the money & the programs in the infrastructure bill. Base = everything before IIJA, the existing CWSRF and DWSRF programs. EPA begins the memo by outlining its “Key Priorities”

as it relates to the funding in the BIL (table 1) and the more favorable subsidization within those programs (table 2). The Key priorities across all BIL water programs are:

- **Provide Flexibility to Meet Local Water Needs** – EPA does recognize the fundamental premise of the SRFs is to provide ultimate flexibility to the states in determining how to allocate the money once out of EPA’s hands, however the memo certainly seeks to place significant guiderails on how state’s can use the BIL money.
- **Increase Investment in Disadvantaged Communities** – this is discussed at length throughout the memo.
- **Make Rapid Progress on Lead Service Line Replacement** – EPA encourages local water agencies to rapidly complete LSL inventories so they can begin replacement.
- **Address PFAS and Emerging Contaminants** – discussed at length below.
- **Support Resilience and One Water Innovation** – EPA encourages states to use SRF funding for projects that:
 - Protect systems against all threats including disasters, climate change, bioterrorism and cyber-attacks.
 - Apply the best available and most geographically relevant climate information, projections, and standards, such as the Federal Flood Risk Management Standard. States should consider how to incorporate climate resilience criteria into their prioritization of SRF funding under the BIL.
 - Drive toward energy efficient and climate smart water systems, including efforts to reduce nitrous oxide and methane emissions, incorporate renewable energy generation, and other projects that reduce the greenhouse gas footprint of the water industry.

Table 1. Summary of BIL Funding

CWSRF General Supplemental	1.9B	2.2B	2.4B	2.6B	2.6B	\$11.7B
CWSRF Emerging Contaminants	100M	225M	225M	225M	225M	\$1B
DWSRF General Supplemental	1.9B	2.2B	2.4B	2.6B	2.6B	\$11.7B
DWSRF Lead Service Line Replacement (LSL)	3B	3B	3B	3B	3B	\$15B
DWSRF Emerging Contaminants	800M	800M	800M	800M	800M	\$4B



- **Support American Workers and Renew the Water Workforce** – enforce Davis Bacon, encourage pre-apprenticeship, etc.
- **Cultivate Domestic Manufacturing** – Build America Buy America (BABA) Act.
- **Fully Enforce Civil Rights.**
- **Refine State SRFs to Build the Pipeline of Projects** – EPA encourages states to take actions to expedite use of the IIJA money, including by:
 - Simplifying the application process.
 - Using the set-asides and technical assistance funds.
 - Encouraging integrated, regional approaches.
 - Increasing internal and external outreach and communications about the SRF programs and BIL funding.

Table 2. Additional Subsidization Overview – Clean Water SRF

CWSRF General Supplemental (\$11.7B)	New BIL CWSRD Emerging Contaminants (\$1B)
<ul style="list-style-type: none"> ■ 49% of funds must be provided as grants and forgivable loans to: <ol style="list-style-type: none"> 1. Meet the state’s affordability criteria 2. Do not meet the affordability criteria but seek additional subsidization to benefit ratepayers 3. Entities that implement a process, material, technique or technology that addresses water or energy efficiency goals, mitigates stormwater runoff, or encourages sustainable project planning, design, and construction ■ Reduces state match from 20% to 10% in FY22 & FY23 	<ul style="list-style-type: none"> ■ 100% in the form of principal forgiveness and or grants ■ Waives state cost share/match requirement

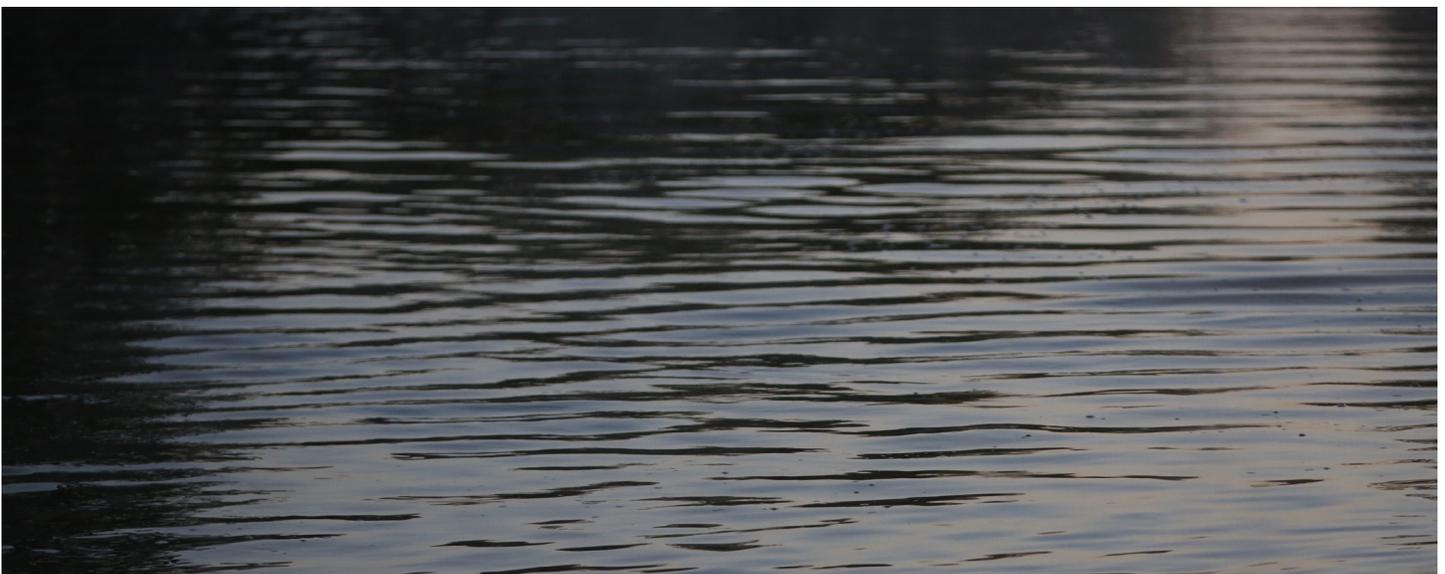
Table 3. Additional Subsidization Overview – Drinking Water SRF

DWSRF General Supp (\$11.7B)	New BIL DWSRF Lead Service Line (\$15B)	New BIL DWSRF Emerging Contaminants (\$4B)
<ul style="list-style-type: none"> ■ 49% of funds must be provided as grants and forgivable loans to disadvantaged communities ■ Reduces state match from 20% to 10% in FY22 & FY23 	<ul style="list-style-type: none"> ■ 49% of funds must be provided as grants and forgivable loans to disadvantaged communities ■ Waives state match requirement 	<ul style="list-style-type: none"> ■ At least 25% of funds must be provided as grants and forgivable loans to disadvantaged communities or public systems serving < 25k people ■ Waives state match requirement



General Implementation

- The BIL provides more than \$43 billion to be administered through the existing CWSRF and DWSRF programs from FY 2022 through 2026.
- EPA will use existing SRF formula for BIL allotments.
- Funds will remain available for obligation to states for the fiscal year in which they are appropriated and the following fiscal year. For example, EPA will make the FY 2022 funds available for obligation to states during FY 2022 and FY 2023.
- EPA strongly encourages states to apply in the first fiscal year of availability. States must make commitments (i.e., they must sign assistance agreements, such as loans, with eligible recipients) within one year after the receipt of each capitalization grant payment from EPA. Once EPA obligates the capitalization grants to the states, the funds will be available to states pursuant to grant regulations.
- Potential State Match Flexibility: EPA makes it a point to mention that American Rescue Plan (ARPA) State and Local funds, if available, may be used to meet non-federal match requirements.
- Application requirements for states:
 - EPA recommends that states submit grant applications to EPA as soon as possible. States have the flexibility to combine IUPs & PPLs for both the BIL and base funding or submit separate IUPs and PPLs for both base and BIL funding. If combined, states must construct the IUPs and PPLs to ensure that EPA can clearly identify BIL- and base-eligible projects. Because of the BIL's appropriations for particular purposes states must submit separate grant applications for each BIL appropriation, and separately from "base" SRF capitalization grant applications in grants.gov.





- EPA states that they will “review IUPs to ensure consistency between the state’s DWSRF disadvantaged community definition or CWSRF affordability criteria and the statutory requirements.” Currently, IUPs must also include the below information, but for the first time, EPA provides guidelines and implies they should be met if states want their IUPs to be approved:
 - **List of projects.**
 - **Priority ranking system** – EPA encourages water quality, public health risks, compliance, and meeting disadvantaged communities.
 - **Explanation about administrative funds** – the max annual amount of CWSRF and DWSRF states can use for administrative is an amount equal to 4% of all grant awards.
 - **Technical assistance** – States can use up to 2% of CWSRF for purposes of hiring staff, nonprofits, regional/interstate/ or municipal entities to assist rural, small, and tribal publicly owned treatment works. This could include community outreach, technical eval of wastewater solutions, prep of applications, prelim engineering reports, and financial docs necessary for receiving SRF assistance. This applies to CWSRF base funding and CWSRF emerging contaminants. IUPs must include amount and intended use of technical assistance.
 - **Public review and comment** – EPA is very explicit here by saying states should include a diverse set of eyes including “potential interested parties, including community groups, neighborhood associations, environmental organizations, environmental justice organizations, and public health groups, that represent a broad spectrum of community interests and extend beyond those on existing mailing lists and traditional participants in the SRF process.” And lays out 7 objectives states should heed when seeking public review. EPA closes this recommendation by stating “EPA will review IUPs with particular focus on whether the state has meaningfully engaged an inclusive spectrum of community interests.”
 - **Draft IUPs for Conditional Grants** – States may need additional time to complete public review or approval of an IUP by boards or state gov’s and have the flexibility to request conditional grants to facilitate expeditious use of funds upon final public review and/or approval. To receive a conditional grant, a draft IUP must be ready for public review and/or consideration by state government bodies and include the information shown above. Conditional awards will contain a grant condition stating that funds may not be drawn until an IUP has completed the review process.
 - **IUPs for Purposes of Partial Grants** – States that have not identified projects in an amount equal to the funds they are eligible to receive under each BIL appropriation have the flexibility to apply for a partial award. The IUP for a partial award must include the information shown above. EPA will only make a partial award for an amount equal to the total cost of the project list. States will have to submit a revised application package to receive remaining funds.



New BIL Provisions and Programs

- All provisions promulgated through statute, guidance, or regulations issued by EPA for the implementation of the CWSRF and DWSRF programs will remain in effect unless they are “inconsistent with the BIL, capitalization grant conditions, or the requirements contained in this document.”

BIL General CWSRF (\$11.7B)

- 49% of the capitalization grant amount as additional subsidization in the form of principal forgiveness or grants.
- Additional subsidization must be provided to eligible CWSRF assistance recipients or project types as described in section 603(i) of the CWA:
 - To benefit a municipality that meets the state’s affordability criteria.
 - To benefit a municipality that does not meet the state’s affordability criteria but seeks additional subsidization to benefit individual ratepayers in the residential user rate class.
 - To any eligible recipient to implement a process, material, technique, or technology that addresses water or energy efficiency goals; mitigates stormwater runoff; or encourages sustainable project planning, design, and construction.
- Additional Subsidization:
 - States are already required to develop affordability criteria for distribution of additional subsidization based on income, unemployment data, population trends, and other data determined relevant by the state. The IUP must include the state’s criteria for providing additional subsidy.
 - EPA goes one step further to say “the state should review its definition to ensure that it is sufficient ... EPA expects states will review, refine, and improve their CWSRF affordability definitions and priority point systems to ensure that additional subsidy is provided to disadvantaged communities to the maximum extent possible.”



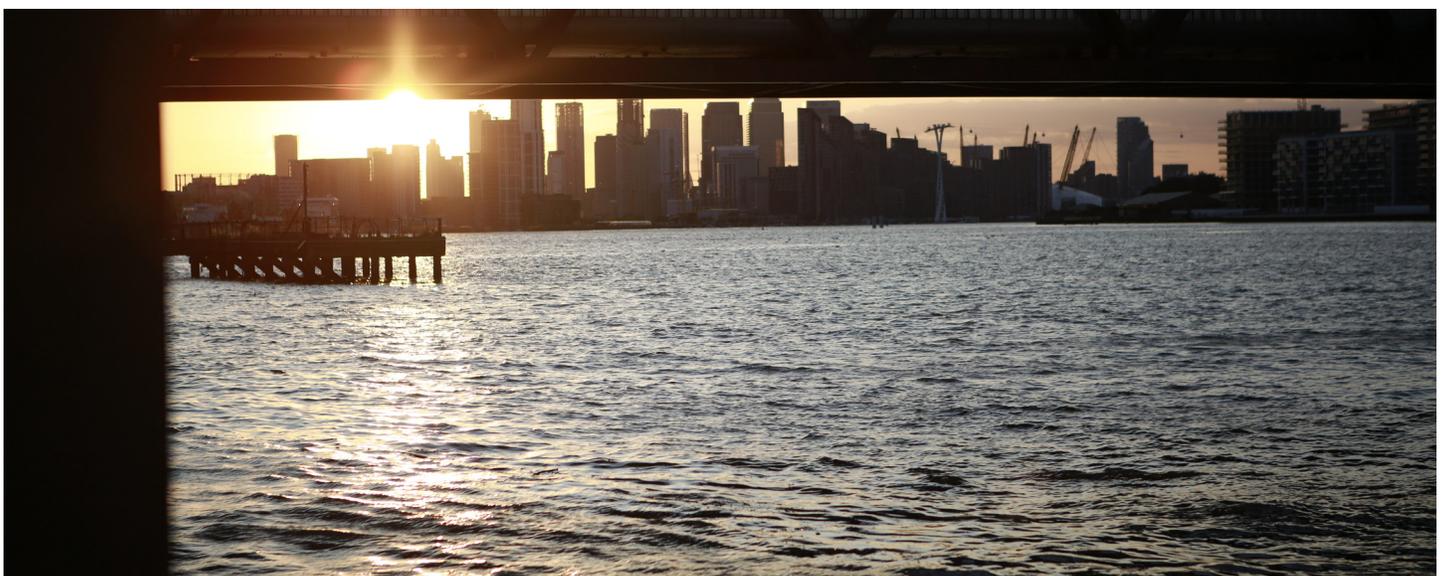


New BIL CWSRF Emerging Contaminants (\$1B)

- A description of emerging contaminants for the purposes of CWSRF financing can be found in Attachment 1.
- For a project or activity to be eligible it must be otherwise eligible under section 603(c) of the CWA and the primary purpose must be to address emerging contaminants.
- States can use up to 2% of to provide technical assistance to small, rural, and tribal POTWs.
- States have the flexibility to craft single assistance agreements (e.g., loans or grants) that contain multiple types of construction components and activities.
- Additional subsidization:
 - States should provide 100% of grant amount as additional subsidization in the form of principal forgiveness/grants. EPA encourages the same prioritization as base CWSRF (affordability criteria, etc).

BIL General DWSRF (\$11.7B)

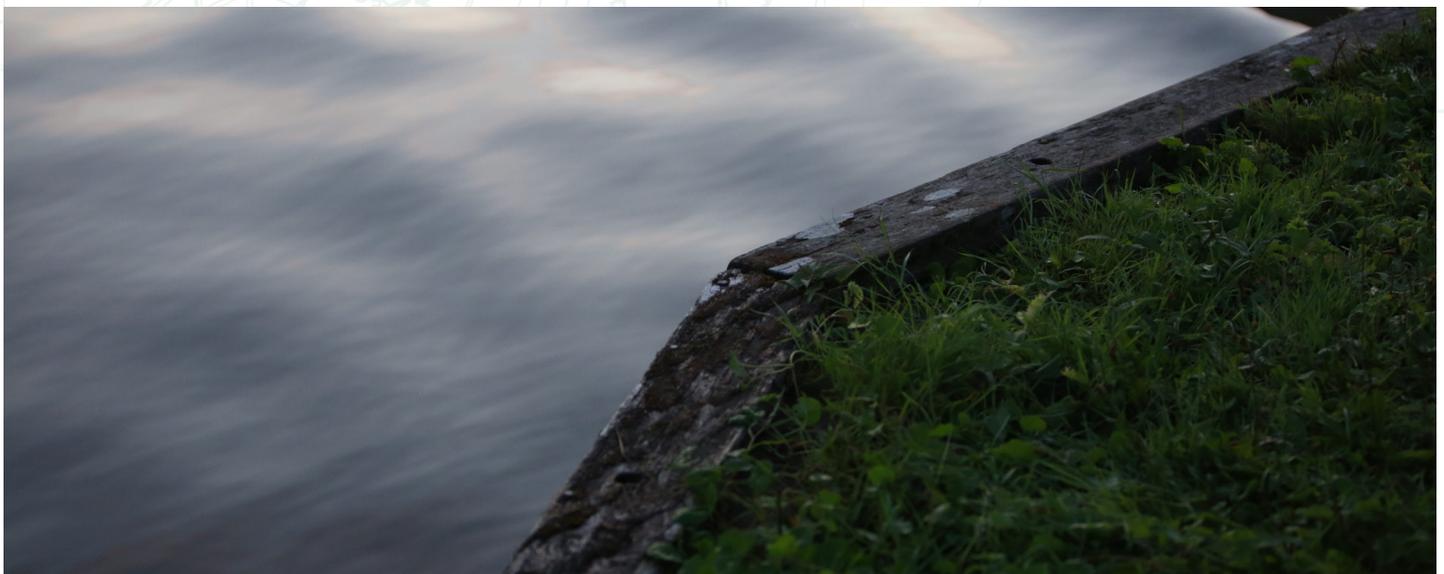
- State match reduced to 10% in first 2 years.
- EPA is explicit: 49% as principal forgiveness/grants and “States must provide additional subsidization to water systems that meet the state’s disadvantaged community criteria.”
- IUP must describe how a state’s disadvantaged community program will operate including the state’s definition of a disadvantaged community, a description of affordability criteria used to determine the amount of disadvantaged assistance, the amount and type of loan subsidies that may be made available to disadvantaged communities, and an identification of projects that will receive disadvantaged assistance and the respective amounts.
- Verbatim to what’s in the base CWSRF section, here EPA says it expects states to “review, refine, and improve their DWSRF disadvantaged community definitions and priority point systems to ensure that additional subsidy is provided to disadvantaged communities.” (additional guidance on this at end of the memo).





New BIL DWSRF Emerging Contaminants (\$4B)

- For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible and the primary purpose must be to address emerging contaminants in drinking water. Given the clear Congressional intent that these funds focus on projects addressing perfluoroalkyl and polyfluoroalkyl substances (PFAS), EPA expects states to actively solicit and prioritize PFAS-focused projects.
- States have the flexibility to fund projects for any contaminant in any of EPA's Contaminant Candidate Lists.
- If EPA has promulgated a National Primary Drinking Water Regulation (NPDWR) for a contaminant, then a project whose primary purpose is to address that contaminant is not eligible for funding under this appropriation, with the PFAS exception explained below. EPA is establishing a NPDWR for PFOA and PFAS however these will be the exception given the congressional directive.
- See attachment for examples of projects and activities that are eligible.
- EPA recommends states coordinate with other programs like the Assistance for Small and Disadvantaged Communities Grant program that also received funding to address emerging contaminants in drinking water.
- States have the flexibility to craft single assistance agreements (e.g., loans or grants) that contain multiple types of construction components and activities.
- Subsidization:
 - Should be 100% principal forgiveness/grants.
 - States must direct 25% of funds to disadvantaged communities (as defined by state) or public water systems serving fewer than 25k persons.
 - EPA reiterates the directive to states to review and refine their disadvantaged definition and point system.





DWSRF Lead Service Line Replacement (\$15B)

- For a project or activity to be eligible it must be otherwise DWSRF eligible and be a lead service line replacement (LSLR) project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines.
- Any project funding the replacement of a lead service line must replace the entire lead service line, not just a portion, unless a portion has already been replaced or is concurrently being replaced with another funding source.
- EPA encourages states to fund the private portion of service line replacements at no additional cost to the homeowner.
- To define a lead service line, EPA will use an amended version of the Lead and Copper Rule Revisions (LCRR):

“...a service line made of lead, which connects the water main to the building inlet. A lead service line may be owned by the water system, owned by the property owner, or both. For the purposes of this subpart, a galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material. If the only lead piping serving the home or building is a lead gooseneck, pigtail, or connector, and it is not a galvanized service line that is considered an LSL the service line is not a lead service line.”

- EPA has expanded the eligible uses beyond the definition above to also include the replacement of lead goosenecks, pigtails, and connectors as eligible expenses, whether standalone or connected to a lead service line.
- Below this memo, there are examples of eligible projects/activities.
- Corrosion control studies, corrosion control infrastructure, and water meters are not eligible under this appropriation, but are eligible under the DWSRF base program.
- Subsidization:
 - No state match.
 - 49% principal forgiveness/grants.
 - States must prioritize disadvantaged communities. EPA reiterates the directive to states to review and refine their disadvantaged definition and point system.

Build America, Buy America: BIL creates the Build America, Buy America (BABA) Act domestic sourcing requirements for Federal financial assistance programs for infrastructure, including the SRF programs. For SRF recipients, BABA expands existing American Iron and Steel (AIS) requirements (which EPA has implemented since 2014) to include construction materials and manufactured goods. EPA will issue a separate memorandum for BABA after the United States Office of Management and Budget (OMB) publishes its guidance. The American Iron and Steel provisions of both the CWSRF and DWSRF continue to apply. OMB guidance is expected by April 15th.

Green Project Reserve: If provided for in the annual appropriation, the green project reserve (GPR) is applicable to the BIL capitalization grants for the corresponding fiscal year.



Reaching Disadvantaged Communities

- As stated, EPA is “expecting” states to review, refine and improve as necessary disadvantaged community definition and affordability criteria to ensure that they are reflective of current affordability issues within the state. Examples of factors to use are at the end of this memo.
- EPA says states should also make funding sources available to communities for planning, design, and other pre-projects costs.
- Reaching disadvantaged in neighborhoods within Larger Communities:
 - The CWA specifically allows CWSRF programs to provide additional subsidization to communities that do not meet a state’s affordability criteria, but specifically in instances where the recipient seeks additional subsidization to benefit individual ratepayers in the residential user rate class that will experience a significant hardship from the increase in rates necessary to finance the project EPA “expects states to work with EPA and stakeholders to identify how this provision can be implemented.”

“EPA expects states to evaluate their affordability criteria to determine whether it can be crafted broadly to include neighborhoods with affordability concerns within larger communities.”

- The SDWA authorizes states to define a “disadvantaged community.” Note that some states define a disadvantaged community to include a large public water system where a particular project within the system addresses a sub-set of the service area that meets affordability criteria. EPA has accepted this type of definition and believes that it is consistent with the definition of “disadvantaged community” at 42 U.S.C. §1452(d)(3). These definitions are not prohibited and serve to make the DWSRF definition of “disadvantaged community” consistent with the CWSRF affordability criteria which considers particular ratepayers.
- Oversight – EPA says that it is amending its annual review checklist to include detailed questions related to “additional subsidization assistance to disadvantaged communities, capacity development, technical assistance, and solicitation.”
- On BIL oversight generally EPA states, “To fulfill our critical programmatic and fiduciary oversight responsibilities for the SRF programs, each EPA Region will provide oversight of the BIL funds. Oversight will include BIL project file and transaction reviews in addition to the reviews of the base SRF files and transaction tests. During the on-site reviews, EPA Regions will discuss ongoing implementation of BIL funding with the states, including supporting disadvantaged communities and how they are utilizing additional subsidization. BIL observations, findings, and/or corrective actions will be documented in the Program Evaluation Report (PER).”



Attachments

Attachment 1 – CWSRF Definition of Emerging Contaminants

Attachment 2 – Detailed List of DWSRF Emerging Contaminants Project and Activity Examples

Attachment 3 – Detailed List of DWSRF Lead Service Line Replacement Project and Activity Examples

Attachment 4 – Additional Information to Assist States with Developing a Disadvantaged Community Definition and Affordability Criteria

Attachment 1

CWSRF Definition of Emerging Contaminants

Emerging contaminants refer to substances and microorganisms, including manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear materials, which are known or anticipated in the environment, that may pose newly identified or re-emerging risks to human health, aquatic life, or the environment. These substances, microorganisms or materials can include many different types of natural or manufactured chemicals and substances – such as those in some compounds of personal care products, pharmaceuticals, industrial chemicals, pesticides, and microplastics.

The main categories of emerging contaminants include but are not limited to:

- Perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other persistent organic pollutants (POPs) such as polybrominated diphenyl ethers (PBDEs; used in flame retardants, furniture foam, plastics, etc.) and other persistent organic contaminants such as perfluorinated organic acids, PFAS free foam flame retardants.
 - Biological contaminants and microorganisms, such as antimicrobial resistant bacteria, biological materials, and pathogens.
 - Some compounds of pharmaceuticals and personal care products (PPCPs), including a wide suite of human prescribed drugs (e.g., antidepressants, blood pressure medications, hormones), over-the-counter medications (e.g., ibuprofen), bactericides, fragrances, UV filters (sunscreen agents), detergents, preservatives, and repellents.
 - Insect Repellents, Cosmetics and UV filters: DEET, Methylparabens, Benzophenone30.
 - Fragrances: HHCB and AHTN (7-acetyl-1,1,3,4,4,6-hexamethyl-1,2,3,4-tetrahydronaphthalene; CAS 21145-77-7; Tonalide).
 - Cosmetic and food preservatives: BHA (butylated hydroxyanisole) and BHT (butylated hydroxytoluene).
 - Veterinary medicines such as antimicrobials, antibiotics, anti-fungals, growth promoters, investigational new animal drugs, and hormones.
 - Substances that illicit endocrine-disrupting chemicals (EDCs), including synthetic estrogens (e.g., 17 α ethynylestradiol, which also is a PCPP) and androgens (e.g., trenbolone, a veterinary drug), naturally occurring estrogens (e.g., 17 β -estradiol, testosterone), as well as many others (e.g., organochlorine pesticides, alkylphenols).
- Nanomaterials such as carbon nanotubes or nano-scale particulate titanium dioxide, of which little is known about either their environmental fate or effects.
- Microplastics/Nanoplastics: synthetic solid particle or polymeric matrix, with regular or irregular shape and with size smaller than 5 mm, of either primary or secondary manufacturing origin, or larger plastic materials that degrade into smaller pieces, including from tire wear (such as 6PPD), which are insoluble in water. Primary microplastics include particles produced intentionally of this very small dimension, like pre-production pellets used as intermediate in plastic production, microbeads for abrasive functions or microfibers that form from synthetic textiles.
- Projects that address contaminants with water quality criteria established by EPA under CWA section 304(a), except for PFAS are not eligible for CWSRF Emerging Contaminants funds.



Attachment 2

Detailed List of DWSRF Emerging Contaminants Project and Activity Examples

Below are non-exhaustive lists of DWSRF-eligible projects and activities under the BIL DWSRF Emerging Contaminants capitalization grants. For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible, and the primary purpose must be to address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances (PFAS) Projects that address any contaminant listed on any of EPA's Contaminant Candidate Lists are eligible (i.e., CCL1 – draft CCL5).

From the DWSRF Infrastructure Fund:

- Emerging contaminants costs associated with the construction of a new treatment facility or upgrade to an existing treatment facility that addresses emerging contaminants.
- Development of a new source (i.e., new/replacement well or intake for a public water system) that addresses an emerging contaminant issue [*Note: water rights purchases must still meet the criteria in the Class Deviation for Water Rights*].
- Consolidation with another water system that does not have emerging contaminants present or has removal capability.
- Costs for planning and design and associated pre-project costs.
- Infrastructure related to pilot testing for treatment alternatives.
- Creation of a new community water system to address unsafe drinking water provided by individual (i.e., privately-owned) wells or surface water sources.

From the DWSRF Set-asides:

- Direct technical assistance to public water systems (of any size) with emerging contaminants and treatment problems which could lead to a loan application.
- PFAS and other emerging contaminants project pre-development activities (such as determining if and where there is a problem).
- Technical assistance for eligible systems to diagnose emerging contaminants problems at their water systems.
- Project planning, preliminary engineering, and design.
- Funding state PWSS staff who are working on PFAS and emerging contaminants oversight.
- Incorporating training on PFAS and emerging contaminants into state operator certification materials.
- Obtain test kits/laboratory equipment for systems to test for newly recognized contaminants of concern and training to use that equipment.
- Pilot testing and studies on improving public water system operation.
- Source water protection activities (e.g., developing source water protection plans, well abandonment, etc.).
- Conducting initial, special (non-routine/non-compliance) monitoring to establish a baseline understanding of a contaminant of concern or operation of newly-used technology.



Attachment 3

Detailed List of DWSRF Lead Service Line Replacement Project and Activity Examples

Below are non-exhaustive lists of DWSRF-eligible projects and activities under the BIL DWSRF Lead Service Line Replacement (LSLR) capitalization grants. For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible and be a LSLR project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines. Any project funded under this appropriation involving the replacement of a lead service line must replace the entire lead service line, not just a portion, unless a portion has already been replaced.

From the DWSRF Infrastructure Fund:

- Complete removal of lead service lines (public and privately owned portion) or service lines made of galvanized iron or galvanized steel (that are currently or have previously been downstream of lead components) and replacement with a pipe that meets the requirements established under 40 CFR 143 and which complies with state and local plumbing codes and or building codes.
- Removal of lead or galvanized goosenecks, pigtails, and connectors, and replacement with an acceptable material that meets the requirements established under 40 CFR 143 and which complies with state and local plumbing codes and or building codes.
- Replacement of curb stops, curb stop boxes, and other service line appurtenances that are removed as part of full LSLR.
- Site restoration, including landscaping, sidewalks, driveways, etc. if the removal was necessary to replace the lead service line.
- Permit fees if the fees are normal, required, and specific to the LSLR. It is recommended that communities waive these fees.
- Temporary pitcher filters or point-of-use (POU) devices certified by an American National Standards Institute accredited certifier to reduce lead during or for a short time period after LSLR projects.
- Development or updating of lead service line inventories, including locating and mapping lead service lines.
 - Methods of investigation to develop inventories could include visual observation, water quality sampling (non-compliance), excavation, vacuum or hydro-excavation, statistical analysis, or other emerging technologies.
- Planning and design for infrastructure projects listed above.
- Non-routine lead sampling (if not for compliance purposes) as part of a LSLR project.

From the DWSRF Set-asides:

- Planning and design for LSLR infrastructure projects.
- Developing or updating lead service line inventories, including locating and mapping lead service lines.
- Providing technical assistance to small water systems undertaking lead service line inventories or construction projects.
- Funding state staff and contractors to work on LSLR education and outreach and inventory plans, etc.
- Non-routine lead sampling (if not for compliance purposes).



Attachment 4

Additional Information to Assist States with Developing a Disadvantaged Community Definition and Affordability Criteria

Congress established that 49% of funding allocated to the SRF programs through the General Supplemental and Lead Service Line Replacement (LSLR) capitalization grants must be provided as additional subsidization for eligible CWSRF assistance recipients or project types as described in section 603(i) of the Clean Water Act (CWA) and water systems that meet the state's disadvantaged community criteria as described in section 1452(d) of the Safe Drinking Water Act (SDWA) for the DWSRF. Also, for the DWSRF Emerging Contaminants funding, states must direct at least 25% of these funds to disadvantaged communities (as defined by the state under SDWA 1452(d)) or public water systems serving fewer than 25,000 persons.

Under Section 50216 of the BIL, EPA must conduct an analysis of programs under CWA title VI and SDWA section 1452 to identify historical distribution of funds to small and disadvantaged communities and new opportunities and methods to improve the distribution of funds under those programs to low-income, rural, minority, and indigenous communities. A report must be submitted to the congressional committees upon completion of the analysis by November 15, 2023.

There is significant variation across the country in the amount of assistance directed to disadvantaged communities and the characteristics of communities that qualify for this assistance. The CWA and the SDWA both state that the Administrator may publish information to assist states in establishing affordability criteria. The information in this memo is one step in an ongoing EPA effort to analyze criteria and adjust them as needed to ensure that the definitions used are compliant with the CWA and SDWA as well as meet the community affordability needs within states. Some key considerations are described below for evaluating how different affordability criteria can capture communities in need. EPA will work with states to strengthen their criteria for distributing additional subsidization. EPA may also provide additional information identified as part of Justice 40. Any criteria or thresholds should be modified by SRF programs to reflect state conditions and considerations.

Examples of criteria within affordability and disadvantaged community definitions that can be barriers include:

- Definitions solely based or contingent upon an “unaffordable” rate. Some state rate considerations serve to assist in affordability determinations, but others do so in a way that can be a barrier to systems with low capacity and a poor rate structure.
- Definitions that include a low cap on additional subsidy (e.g., 30%) are a barrier to communities that need a higher amount of additional subsidization to be able to take the loan.
- Definitions based solely on population or definitions that include population as a determining factor.



EPA strongly encourages states to amend their affordability and disadvantaged community definitions if they currently utilize any of these three criteria.

The CWA section 603(i)(2) requires states to develop affordability criteria that will assist them in identifying applicants that would have difficulty financing projects without additional subsidization. The CWA section 603(i)(2)(A) requires that criteria be based on:

- Income.
- Unemployment data.
- Population trends.
- Other data determined relevant by the state.

Income, unemployment data, and population trends must be reflected in state affordability criteria; however, the statute does not prescribe the weight that must be given to each type of criteria. States have the flexibility to determine which of the required criteria are most relevant to their CWSRF programs and may structure their program's criteria accordingly. States should periodically review and update their criteria to ensure that it is still appropriate for economic conditions in the state and that they are utilizing the most current data.

Additional Information to Assist States in Establishing Affordability Criteria

Per section 603(i)(2) of the CWA, the CWSRF affordability criteria must include income, unemployment data, and population trends. As demonstrated by the wide range of criteria developed by the states, there are many factors to consider within each criterion. The following are examples of metrics that EPA suggests states consider when reviewing their affordability criteria. States have the flexibility to use different percentages based on demographics and other state-specific factors. The metrics may be set numbers for a state or tiered numbers to address specific yet diverse state needs. States should also consider how a mix of affordability criteria may be used to meet community needs. States should periodically review their affordability criteria to ensure that it is still appropriate for the socioeconomic conditions in the state and uses the most current available data.

Income:

- Community MHI is less than 80% of State MHI.
- Communities with \$25,766 or less upper limit of Lowest Quintile Income.
- Communities with $\geq 30.9\%$ Population Living Under 200% of Poverty Level.
- Community with census tracts that have a poverty rate greater than or equal to 20%.

Unemployment Data:

- Communities with $\geq 3.4\%$ Unemployed Population ≥ 16 years in Civilian Labor Force.

Population Trends:

- Communities with $\geq 12.1\%$ Vacant Households.

Other Data Determined Relevant by the State:

- Community in a county with a Social Vulnerability Index score higher than 0.8036.
- Combined sewer and drinking water costs are greater than 2% of the 20th percentile household income (i.e., the Lowest Quintile of Income for the Service Area).
- Communities with 10% of failing decentralized systems.
- Communities with $\geq 11.7\%$ Population Receiving Food Stamps/SNAP Benefits.
- Communities with Lagoon systems not achieving water quality standards.



Additional Information to Assist States in Establishing a Disadvantaged Community Definition

The following are examples of criteria that states are currently using or may want to consider using. Note that some states define a disadvantaged community to include a large public water system where a particular project within the system addresses a sub-set of the service area that meets affordability criteria. States may use different percentages and thresholds based on demographics and other state-specific factors. The metrics may be set numbers for a state or tiered numbers to address specific state needs to best address the health protection objectives of SDWA. States should also consider how a mix of affordability criteria may be used to meet community needs. States should periodically review their affordability criteria and disadvantaged community definition to ensure that it is still appropriate for the economic conditions in the state and uses the most current available data.

- Communities with census tracts that have [X poverty indicator] are eligible for lead service line additional subsidy if the recipient uses those funds for the direct benefit of those residents.
- Community MHI is less than 80% of State MHI.
- Communities with \$25,766 or less upper limit of Lowest Quintile Income.
- Communities with $\geq 30.9\%$ Population Living Under 200% of Poverty Level.
- Community with census tracts that have a poverty rate greater than or equal to 20%.
- Communities with $\geq 3.4\%$ Unemployed Population ≥ 16 years in Civilian Labor Force.
- Communities with $\geq 12.1\%$ Vacant Households.
- Community in a county with a Social Vulnerability Index score higher than 0.80.
- Combined sewer and drinking water costs are greater than 2% of the 20th percentile household income (i.e., the Lowest Quintile of Income for the Service Area).
- Communities with $\geq 11.7\%$ Population Receiving Food Stamps/SNAP Benefits.

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