




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

March 8, 2022

## **MEMORANDUM**

**SUBJECT:** Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law

**FROM:** Radhika Fox  
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**TO:** EPA Regional Water Division Directors  
State SRF Program Managers

### **Overview**

President Biden signed the Bipartisan Infrastructure Law on November 15, 2021. The law's investment in the water sector is nothing short of transformational. It includes \$50 billion to the U.S. Environmental Protection Agency (EPA) to strengthen the nation's drinking water and wastewater systems – the single largest investment in clean water that the federal government has ever made.

EPA is committed to a productive partnership with states, tribes, and territories to maximize the impact of these funds in addressing urgent water challenges facing communities. The majority of water infrastructure dollars will flow through the Clean Water and Drinking Water State Revolving Funds (SRFs). For decades, the SRFs have been the foundation of water infrastructure investments, providing low-cost financing for local projects across America. EPA, states, tribes, and territories have successfully worked together to steward more than \$200 billion in SRF funds since 1988.

This memorandum provides information and guidelines on how EPA will award and administer SRF Capitalization Grants appropriated to the State and Tribal Assistance Grants (STAG) account in the Bipartisan Infrastructure Law (BIL) (P.L. 117-58), also known as the "Infrastructure Investment and Jobs Act of 2021" (IIJA). The information is organized in the following manner:

- **Implementation Memorandum.** This memorandum reviews key priorities for SRF BIL implementation. EPA Regional Water Divisions and Office of Water stand ready to work closely with states, tribes, and territories to collaboratively accomplish these goals.
- **Attachment 1: BIL Funding Implementation.** Attachment 1 provides detailed technical information pertaining to program requirements for the five SRF funds through the BIL: CWSRF General Supplemental Funding, CWSRF Emerging Contaminants Funding, DWSRF General

Supplemental Funding, DWSRF Emerging Contaminants Funding, and DWSRF Lead Service Line Replacement Funding.

- **Attachment 2: CWSRF Base Program Implementation.** Attachment 2 reviews key BIL amendments to the Clean Water Act (CWA), which include new provisions applicable to the base CWSRF programs and, unless otherwise directed, are also applicable to projects funded in whole or in part with funds made available by BIL.
- **Attachment 3: DWSRF Base Program Implementation.** Attachment 3 reviews key BIL amendments to the Safe Drinking Water Act (SDWA), which include new provisions applicable to the base DWSRF programs and, unless otherwise directed, are also applicable to projects funded in whole or in part with BIL funds.

This implementation memorandum is expected to be applicable to all five years of BIL appropriations. EPA will issue procedures during FYs 2023 through 2026 with allotment tables and any other necessary program updates. EPA will also issue, and periodically update, a list of questions and answers.

## Key Priorities

### *Provide Flexibility to Meet Local Water Needs*

A fundamental principle of the SRFs – which is reaffirmed in this BIL implementation memorandum – is the flexibility provided to states and borrowers to address a wide variety of local water quality and public health challenges. EPA continues to support and actively encourage flexibility in the implementation of BIL SRF funding. For borrowers, the SRFs remain a flexible source of capital that can be used in combination with additional funding sources to finance water infrastructure projects. With supplemental funding to the CWSRF and DWSRF – and creation of dedicated funding within the SRFs to tackle lead and emerging contaminants – states have a great deal of flexibility in program administration. This implementation memorandum and accompanying technical attachments confirm state flexibilities for the BIL SRF funding, including, but not limited to, the following:

As it relates to program administration and processes, states have the flexibility to:

- Determine priorities and select projects.
- Combine Intended Use Plans (IUPs) and Project Priority Lists (PPLs) for both the BIL and base funding or submit separate IUPs and PPLs for both base and BIL funding.
- Apply for conditional or partial grants.
- Craft single assistance agreements (e.g., loans or grants) that contain multiple types of construction components and activities funded by multiple pots if the funds are tracked separately.
- Design and manage the application process.
- Take administrative funds from each funding stream.
- Transfer funds between programs to address state needs.
- Use recycled funds for any eligible purpose.
- Set interest rates and repayment terms.

As it relates to the additional subsidy, states have the flexibility to:

- Define disadvantaged community and affordability criteria in a manner that is consistent with SDWA and CWA.
- Determine the amount of additional subsidization provided in each assistance agreement.

As it relates to emerging contaminants, states have the flexibility to:

- Choose projects that are CWSRF eligible whose primary purpose is to address emerging contaminants using a broad definition.
- Select projects that are DWSRF eligible whose primary purpose must be to address emerging contaminants, with a focus on PFAS, using the broad CCL 1-5.

Additionally, the Department of the Treasury has determined that State and Local Financial Recovery Funds under the American Rescue Plan Act available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the DWSRF and CWSRF programs. This provides states additional flexibility to meet match requirements included in the BIL. EPA will be providing a fact sheet to state SRF programs to support utilization of this flexibility.

### ***Increase Investment in Disadvantaged Communities***

A key priority of BIL is to ensure that disadvantaged communities benefit equitably from this historic investment in water infrastructure. Disadvantaged communities can include those with environmental justice concerns that often include low-income people and communities of color. Disadvantaged communities exist in every state, tribe, and territory and encompass urban, suburban, and rural areas across America. Disadvantaged communities experience, or are at risk of experiencing, disproportionately high exposure to pollution – whether in air, land, or water.

The BIL mandates that 49% of funds provided through the DWSRF General Supplemental Funding and DWSRF Lead Service Line Replacement Funding must be provided as grants and forgivable loans to disadvantaged communities. The BIL also requires that not less than 25% of funds provided through the DWSRF Emerging Contaminants Funding be provided as grants and forgivable loans to disadvantaged communities or public water systems serving fewer than 25,000 people. The SDWA requires states to establish a definition of disadvantaged communities that can receive this additional subsidization.

For the CWSRF, the BIL mandates that 49% of funds provided through the CWSRF General Supplemental Funding must be provided as grants and forgivable loans to the following assistance recipients or project types:

- Municipalities that meet the state's affordability criteria.
- Municipalities that do not meet the state's affordability criteria but seek additional subsidization to benefit individual ratepayers in the residential user rate class.
- 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.

Congress, acting in a bipartisan fashion, included these provisions to ensure that disadvantaged communities fully benefit from these historic investments in the water sector. EPA will actively work with states to fully meet Congressional intent. This will include helping states identify communities in need, affirmatively reviewing SRF IUPs, and conducting annual reviews that evaluate progress toward this bipartisan requirement.

EPA will collaborate with state SRF programs to share models, examples, and build state capacity to target resources to disadvantaged communities. In addition to the technical assistance offered by the states to disadvantaged communities, EPA will launch a substantial technical assistance program – in

close collaboration with states – to provide assistance directly to disadvantaged communities that lack the financial, managerial, and technical capacity to access the SRF program.

Throughout the five years of BIL implementation, EPA expects states to:

- **Evaluate and revise, as needed, the DWSRF disadvantaged community definition and CWSRF affordability criteria.** This definition and these criteria should capture both urban and rural disadvantaged communities and include criteria that are consistent with the appropriate statute. For example, a state definition of “disadvantaged” under the SDWA entirely based on population and without reference to affordability is problematic. The technical guidance in Attachment 1, Appendix E provides further information on disadvantaged community definitions/affordability criteria and EPA oversight of this provision.
- **Evaluate the SRFs’ priority point system for project ranking commensurate with need.** Priority points may need to be redistributed to ensure disadvantaged communities are receiving funding. For example, states should evaluate the weight associated with points given for different ranking criteria to determine whether they act as a barrier to, or encourage, funding for disadvantaged communities.
- **Technical assistance funding.** EPA recommends states use the full DWSRF 2% small system technical assistance set-aside and the newly available CWSRF 2% technical assistance funds to enhance or build programs that proactively identify, reach out to, and provide assistance to rural, small, and tribal publicly owned treatment works and drinking water systems, particularly in disadvantaged communities. The programs should be designed to help disadvantaged communities identify needs, develop projects, apply for funding, design and implement projects, build capacity, and create training and career pathways.
- **Engage residents and community stakeholders in disadvantaged communities.** SRFs have successfully funded many projects in small and disadvantaged communities in the past. To continue and deepen this success, it may be necessary to develop relationships with new constituencies to reach disadvantaged communities with technical assistance and funding. EPA encourages states to reach beyond traditional stakeholder organizations and engage neighborhood and other organizations connected to the community to help identify needs, comment on IUPs, and communicate priorities.

Working collaboratively, EPA and SRF programs can make progress towards Justice40, which aims to ensure that federal agencies deliver at least 40% of benefits from certain investments to disadvantaged communities.

### ***Make Rapid Progress on Lead Service Line Replacement***

The BIL contains a historic \$15 billion in dedicated funding through the DWSRF for lead service line (LSL) identification and replacement. This funding is being provided to states with no match requirement. EPA will collaborate with state SRF programs to share models, guidance, and build state capacity to assist local communities and ensure lead service line funding is effectively and equitably deployed. DWSRF supplemental funding and base funding can be used for LSL identification and replacement.

As states plan for the use of these funds, EPA recommends:

- **Working closely with local water agencies to rapidly complete LSL inventories.** While inventories do not need to be complete before LSL replacement begins, EPA strongly encourages

states to devote funding and technical assistance to help local water systems develop LSL inventories and undertake replacement planning. Under the Lead and Copper Rule Revisions, all water systems must have initial inventories by October 2024, but EPA urges states to employ technical assistance set-aside funds to help water systems develop inventories more quickly, wherever practicable. Preparing the inventory will allow systems to assess the magnitude of their LSLs, better identify sampling locations, and begin planning for LSL removal actions, including applying for BIL funds.

- **Supporting water agencies in planning for full, not partial, LSL replacement.** Any project funded under this \$15 billion appropriation for the replacement of LSLs must replace the entire LSL, not just a portion, unless a portion has already been replaced. States should affirmatively convey this to potential SRF applicants to ensure that they propose projects that fully replace, and pay for, both public and private LSLs. This BIL requirement helps address a long-standing equity challenge – for some Americans, the cost to replace their portion of LSLs is prohibitively high. Americans unable to replace their portion of the LSL remain disproportionately exposed to lead and its harmful impacts.

### ***Address PFAS and Emerging Contaminants***

The BIL provides \$5 billion through the SRFs to reduce people’s exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through their drinking water and to help address discharges through wastewater and, potentially, nonpoint sources. This is a unique opportunity to prioritize investment to local communities that are on the frontlines of PFAS contamination and that have few options to finance solutions through traditional programs. The BIL provides emerging contaminants funding through the SRFs that must be distributed to communities entirely as forgivable loans or grants. States are not required to provide matching funds. This demonstrates an unprecedented commitment from Congress to addressing PFAS water contamination across the nation.

PFAS are not the only emerging contaminants that threaten our water supplies and environment. Water projects that address other emerging contaminants will also be eligible for funding under this program. In Attachment 1, Appendices B and C, EPA has provided a description of emerging contaminants for the SRF programs to use in evaluating project eligibility.

### ***Support Resilience and One Water Innovation***

One of the defining features of the SRFs is the broad range of eligible projects that states can fund to flexibly support priority needs. EPA encourages states to utilize the significant increase in SRF funding for infrastructure projects that make water systems more resilient to all threats – whether it is natural disasters, climate change, or threats such as bioterrorism and cyber-attacks.

States are strongly encouraged to fund projects that:

- **Foster resilience to all threats and hazards.** Consistent with Presidential Policy Directive (PPD) 21, critical infrastructure must be secure and resilient to all threats and hazards, both natural and manmade, in an increasingly electrified, digitized, and interconnected society. EPA urges states to use the historic increase in SRF funding to foster water, wastewater, and stormwater system resilience to all hazards, including new and emerging threats like cyber-attacks.
- **Support climate adaptation.** EPA strongly encourages states to support water, wastewater, and stormwater infrastructure projects that 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.** Water and wastewater systems are significant energy users and release potent greenhouse gases, including nitrous oxide and methane. EPA strongly encourages states to utilize BIL funding to support local water and wastewater agencies' efforts to reduce nitrous oxide and methane emissions, incorporate renewable energy generation, and complete other projects that reduce the greenhouse gas footprint of the water industry.

### ***Support American Workers and Renew the Water Workforce***

The BIL is not only an opportunity to reinvest in America's water infrastructure, but also an opportunity to invest in the American worker. BIL investments will create jobs in construction, operations, and maintenance, and other family-supporting careers – at a pivotal moment when more than one-third of the water workforce will retire in the next five years. Throughout BIL implementation, EPA is committed to working with states, tribes, and territories – as well as labor organizations, employers, and educators – to renew America's water workforce and create good-paying jobs in communities across America.

As states implement SRF funding, they should:

- Enforce long-standing Davis-Bacon related act prevailing wage requirements across projects that receive CWSRF and DWSRF resources, as required under federal law.
- Encourage pre-apprenticeship, registered apprenticeship, and youth training programs that open pathways to employment.
- Encourage SRF funding recipients to support safe, equitable, and fair labor practices by adopting collective bargaining agreements, local hiring provisions (as applicable), project labor agreements, and community benefits agreements. EPA, in collaboration with the Department of Labor, will provide information and tools to support these efforts.

### ***Cultivate Domestic Manufacturing***

Acting in a bipartisan fashion, Congress passed the Build America Buy America (BABA) Act in 2021, concurrently with the BIL. Congress established this domestic preference program to create long-term opportunities for domestic manufacturers and manufacturing jobs and build resilient domestic supply chains for a wide range of products.

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.

The Office of Management and Budget will release program guidance to federal agencies. EPA will then issue implementation procedures for BABA compliance for federal water infrastructure funding programs. EPA recognizes this is a new and complex provision, and we will work closely with states, tribes, and territories on technical assistance and training.

As states deploy BIL SRF funding, programs should:

- Oversee BABA implementation across state SRF-funded projects, as applicable, and provide detailed information on BABA compliance requirements, flexibilities, and processes to recipients.
- Inform SRF grant and loan recipients of the domestic preference requirements. EPA will work with states to develop and provide information to SRF recipients.
- Collaborate with EPA and industry to incentivize and grow domestic supply chains and U.S. manufacturing capacity for products essential to drinking water, wastewater, and stormwater infrastructure.
- Educate funding recipients about their eligibility for waivers and provide help applying for waivers. EPA will develop appropriate waivers and processes to facilitate a smooth transition to these expanded requirements.

### ***Fully Enforce Civil Rights***

Under Title VI of the Civil Rights Act, EPA has a responsibility to ensure that federal funds are not being used to subsidize discrimination based on race, color, or national origin. This prohibition against discrimination under Title VI has been a statutory mandate since 1964, and EPA has had Title VI regulations since 1973. EPA’s nondiscrimination regulations prohibit recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex. EPA intends to carefully evaluate the implementation of SRF funding under the BIL to ensure compliance with civil rights laws. EPA will provide interested states with technical assistance and training to support their compliance with Title VI obligations.

### ***Refine State SRFs to Build the Pipeline of Projects***

EPA encourages states to strategically use new authorities and funds from BIL as a catalyst to continue building and maintaining a robust project pipeline of SRF projects. It is critical that states use all funds—both from BIL and the base SRF programs – in a timely and expeditious manner. At the same time, sustainable projects are necessary to transforming the sector. To help achieve this balance, EPA recommends states use practices already exemplified in some SRF programs:

- **Simplify and streamline the application process.** Burdensome application processes, additional program requirements, or other barriers may discourage program participation from disadvantaged communities. States should take actions that reduce the burden including moving to a digital application process, coordinating applications and requirements across funding programs, and more. States are encouraged to introduce greater flexibility to the application timeline, such as eliminating application deadlines or operating a year-round application cycle with quarterly project ranking.
- **Use set-asides and technical assistance.** Some disadvantaged communities lack the capacity to navigate the SRF application process and manage the project. States should offer and expand pre-development and pre-construction funding to seed project development for small and disadvantaged communities.
- **Encourage integrated, regional approaches.** Regionalization, partnerships, and/or non-physical consolidation may be the best option for some systems. This can be encouraged and

incentivized through the SRFs. State SRF programs should explore ways to provide funding to communities that agree to connect small systems to their wastewater and drinking water systems. SRF programs should also employ state-led regional education and planning opportunities, giving emphasis to integrated planning as authorized under CWA Section 402(s).

- **Increase internal and external outreach and communications about the SRF programs and the BIL funding.** This could include presentations or other marketing events to municipal and utility officials, targeted outreach to distressed water systems or those with substantial infrastructure needs, workshops and webinars, in-person training programs, training video or digital modules on the application process, and partnering with community groups and philanthropic organizations.

## **Conclusion**

Building on the long and successful history of the SRFs, EPA, state and tribal water programs, and local governments can transform the water sector through this funding. EPA is committed to ensuring all communities have access to drinkable, fishable, and swimmable water – particularly historically disadvantaged communities. EPA is committed to a productive partnership with states, tribes, and territories to maximize the impact of these funds in addressing urgent water challenges facing communities.

## **Attachments**

### **Attachment 1: BIL Funding Implementation**

Guidance on CWSRF General Supplemental Funding, CWSRF Emerging Contaminants Funding, DWSRF General Supplemental Funding, DWSRF Emerging Contaminants Funding and DWSRF Lead Service Line Replacement Funding.

#### *Appendices to Attachment 1*

- A. Bipartisan Infrastructure Law: Environmental Protection Agency: 2022 State Revolving Fund (SRF) Grants to States, Tribes, and Territories by Program
- B. CWSRF Definition of Emerging Contaminants
- C. Detailed List of DWSRF Emerging Contaminants Project and Activity Examples
- D. Detailed List of DWSRF Lead Service Line Replacement Project and Activity Examples
- E. Additional Information to Assist States with Developing a Disadvantaged Community Definition and Affordability Criteria

### **Attachment 2: Implementation of CWSRF-Related Amendments in the BIL**

The BIL amends the CWA to include new provisions applicable to the base CWSRF programs and unless otherwise directed, applicable to projects funded in whole or in part with funds made available by BIL.

### **Attachment 3: Implementation of DWSRF-Related Amendments in the BIL**

The BIL amends the SDWA to include new provisions applicable to the base DWSRF programs and unless otherwise directed, applicable to projects funded in whole or in part with funds made available by BIL.



# **Attachment 1: BIL Funding Implementation**

## **Implementation of CWSRF and DWSRF Funding in the Bipartisan Infrastructure Law (BIL)**

This attachment assists states in implementing funding appropriated from the Bipartisan Infrastructure Law (BIL), also known as the Infrastructure Investment and Jobs Act (IIJA) of 2021, (P.L. 117-58), signed by President Biden on November 15, 2021. The following information guides the implementation of five BIL appropriations:

- CWSRF General Supplemental Funding
- CWSRF Emerging Contaminants Funding
- DWSRF General Supplemental Funding
- DWSRF Emerging Contaminants Funding
- DWSRF Lead Service Line Replacement Funding

### **I. BACKGROUND**

The BIL appropriates more than \$43 billion to be administered through the existing CWSRF and DWSRF programs from fiscal years (FYs) 2022 through 2026. There are two appropriations per year for the CWSRF and three appropriations per year for the DWSRF. Table 1 below shows a summary of the five distinct appropriations and annual appropriation amounts. Per statute, EPA will use the existing SRF allotment formulas<sup>1</sup> for all BIL SRF appropriations. For the DWSRF, the allotment formula will change upon release of new data derived from the Seventh Drinking Water Needs Survey and Assessment (DWINSA). Allotment tables for FY 2022 are included in Appendix A.

Funds will remain available for obligation to states for the fiscal year in which they are appropriated and the following fiscal year, per the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA).<sup>2</sup> 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.<sup>3</sup> Once EPA obligates the capitalization grants to the states, the funds will be available to states pursuant to grant regulations.

States administer the funds through the existing SRF programs. SRF requirements and procedures apply to these new funds. The partnership between the federal government and states is key to addressing our significant water infrastructure challenges. A central tenant of this partnership is the flexibility provided to states that allow for funding to be used to address each state's unique needs. General information on the SRF programs can be found at: <https://www.epa.gov/cwsrf> and <https://www.epa.gov/dwsrf>.

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<sup>1</sup> 33 U.S.C. §1384(c) and 42 U.S.C. 300j-12 (a)(1)(E)

<sup>2</sup> 33 U.S.C. §1384(c)(2) and 42 U.S.C. 300j-12 (a)(1)(E)

<sup>3</sup> 40 CFR § 35.3135(c) and §35.3550(e)

Local drinking water and wastewater systems (and other eligible assistance recipients) apply for BIL SRF funding directly through their state [CWSRF](#) and [DWSRF](#) programs. Local leaders should direct questions about applications and state program eligibilities to their state SRF managers.

Table 1. Summary of BIL Appropriations (FY 2022 through FY 2026)						
Appropriation	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Five Year Total
<b>CWSRF General Supplemental</b>	\$1,902,000,000	\$2,202,000,000	\$2,403,000,000	\$2,603,000,000	\$2,603,000,000	<b>\$11,713,000,000</b>
<b>CWSRF Emerging Contaminants</b>	\$100,000,000	\$225,000,000	\$225,000,000	\$225,000,000	\$225,000,000	<b>\$1,000,000,000</b>
<b>DWSRF General Supplemental</b>	\$1,902,000,000	\$2,202,000,000	\$2,403,000,000	\$2,603,000,000	\$2,603,000,000	<b>\$11,713,000,000</b>
<b>DWSRF Emerging Contaminants</b>	\$800,000,000	\$800,000,000	\$800,000,000	\$800,000,000	\$800,000,000	<b>\$4,000,000,000</b>
<b>DWSRF Lead Service Line Replacement</b>	\$3,000,000,000	\$3,000,000,000	\$3,000,000,000	\$3,000,000,000	\$3,000,000,000	<b>\$15,000,000,000</b>

## II. APPLICATION REQUIREMENTS FOR BIL CAPITALIZATION GRANT FUNDS

EPA recommends that states submit grant applications to EPA as soon as possible. States have the flexibility to combine Intended Use Plans (IUPs) and Project Priority Lists (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 and the public can clearly identify BIL- and base-eligible projects, including identifying additional subsidization and funding amounts. The IUPs and PPLs must meet existing SRF requirements. Because of the BIL’s appropriations for particular purposes, and to be consistent with existing grants regulations and reporting requirements, states must submit separate grant applications for each BIL appropriation, and separately from “base” SRF capitalization grant applications in grants.gov.

To receive BIL funding, states must submit the following documents to EPA:

### A. INTENDED USE PLANS

Section 606(c) of the CWA and section 1452(b) of the SDWA require the states to prepare a plan identifying the intended uses of the funds in the SRF and describing how those uses support the goals of the SRF. An IUP, meeting all requirements of Title VI of the CWA and regulations, or section 1452 of the SDWA and regulations, will be required for EPA’s approval of a grant award and release of awarded funds. Public engagement is strongly encouraged during the state’s solicitation stage to ensure an abundance of diverse applicants as the IUP is being developed. EPA will review IUPs to ensure consistency between the state’s DWSRF disadvantaged community definition or CWSRF affordability criteria and the statutory requirements.

**1. List of Projects:** States have flexibility to fund a wide variety of projects. Under CWA §606(c)(1), the IUP must include a list of publicly owned treatment works projects on the state’s Project Priority List (PPL), developed pursuant to section 216 of the CWA, that are eligible for

SRF construction assistance. This list must include: the name of the community; permit number or other applicable enforceable requirement, if available; the type of financial assistance; and the projected amount of eligible assistance. The IUP must also contain a list of the activities eligible under section 603(c) of the CWA, including the nonpoint source and national estuary protection activities that the state expects to fund from its SRF. The fundable list must contain eligible projects for which the total cost of assistance requested is at least equal to the amount of the grant(s) being applied for. States should make every effort to identify projects for all available SRF funds (i.e., capitalization grants, recycled funds, interest earnings, etc.) to ensure previously appropriated dollars revolve.

Under SDWA, states retain similar funding flexibility. SDWA §1452(b)(3)(B), requires state IUPs to include a list of projects that are eligible for assistance under section 1452 and are to be assisted pursuant to the plan (i.e., a PPL). This list must include: the name of the public water system, a description of the project, the priority assigned to the project, the expected terms of financial assistance, and the size of the community served. The IUP must contain a fundable list of projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for. States should make every effort to identify projects for all available SRF funds (i.e., capitalization grants, recycled funds, interest earnings, etc.) to ensure previously appropriated dollars revolve. The IUP must also contain a comprehensive list of projects that may receive DWSRF assistance in the future. A state may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

**2. Priority Setting:** The IUP must include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for ranking. The priority for the use of funds should address water quality, the most serious risks to public health, ensure compliance, and assist systems most in need based on the state's affordability criteria and disadvantaged community definition. States should review their SRF priority setting system to ensure they adequately address these priorities.

**3. Explanation About Administrative Funds:** The maximum *annual* amount of CWSRF and DWSRF money (not including any fees collected that are placed in the fund) that may be used to cover the reasonable costs of administering the fund (i.e., all BIL and base appropriations) is the greatest of the following: an amount equal to 4% of all grant awards to the fund received by a state CWSRF (less any amounts that have been used in previous years to cover administrative expenses) or DWSRF for the fiscal year; \$400,000; or 1/5 percent of the current valuation of the fund. The BIL did not alter these options or the calculation of available administrative funds and verification procedures already in place.

**4. CWSRF 2% Technical Assistance:** BIL includes the following provision:

*(k) Additional Use of Funds.--A State may use an additional 2 percent of the funds annually awarded to each State under this title for nonprofit organizations (as defined in section 104(w)) or State, regional, interstate, or municipal entities to provide technical assistance to rural, small, and tribal publicly owned treatment works (within the meaning of section 104(b)(8)(B)) in the State.*

States have the flexibility to use up to an amount equal to 2% of their annual CWSRF capitalization grant for the purpose of hiring staff, nonprofit organizations, or regional, interstate,

or municipal entities to assist rural, small, and tribal publicly owned treatment works. The form of that assistance is flexible and could include, but is not limited to, community outreach, technical evaluation of wastewater solutions, preparation of applications, preliminary engineering reports, and financial documents necessary for receiving SRF assistance. This provision applies to the base program, the BIL CWSRF General Supplemental fund, and the BIL CWSRF Emerging Contaminants fund.

The maximum amount of CWSRF money that may be used to provide technical assistance consistent with section 603(k) of the CWA is an amount equal to 2% of all grant awards received by a state CWSRF after November 15, 2021. If a state does not utilize the full amount of the technical assistance funds allowed under a capitalization grant, they may reserve the right to utilize the unused portion at a later date.

States must include in the IUP the amount of the technical assistance funds they plan to use and a description of the activities they plan to fund. In the Annual Report and the SRF Reporting System, states must provide a detailed accounting of the use of the funds. EPA encourages states to maximize the use of the 2% technical assistance funds to identify and conduct proactive outreach to, and facilitate applications from, disadvantaged communities previously unable to begin or complete SRF funding requirements.

**5. Public Review and Comment:** The IUP must contain a statement of how the state met the requirement of CWA section 605 or SDWA section 1452(b)(1) for meaningful public review and comment on the preparation of the IUP. When seeking public review, states should include a diverse set of 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. In addition, states should strive to achieve the following objectives when seeking public review: (1) assure that the public has the opportunity to understand official programs and proposed actions, and that the state fully considers the public's concerns; (2) assure that the state does not make any significant decision on any SRF activity without consulting interested and affected segments of the public; (3) assure that the state action is as responsive as possible to public concerns; (4) encourage public involvement in implementing the SRFs; (5) keep the public informed about significant issues and proposed project or program changes as they arise; (6) foster a spirit of openness and mutual trust between the state and the public; and (7) use all feasible means to create opportunities for public participation, and to stimulate and support public participation. States should make a particular effort to identify and engage organizations that work in disadvantaged communities. EPA will review IUPs with particular focus on whether the state has meaningfully engaged an inclusive spectrum of community interests.

**6. Draft IUPs for Purposes of Conditional Grants:** States may need additional time to complete public review or approval of an IUP by boards or state governments 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. States must submit an IUP that has completed the public review process and satisfied the term and condition of the grant before funds may be drawn. This option provides additional flexibility to states to accelerate the grants process.

**7. 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. An amended IUP including projects in an amount equal to the remaining funds available to the state under BIL must be submitted by the state to EPA before the grant is amended to award the remaining funds. This includes a revised grant application package through grants.gov. Certain requirements (e.g., additional subsidization and green project reserve) are calculated based on a percentage of the capitalization grant *awarded*. Per statute, states may not apply exclusively for the set-asides or the additional subsidization portion of the capitalization grant.

## **B. OTHER APPLICATION COMPONENTS**

1. SF-424 Application for Federal Assistance, with original signature, including:
  - a. SF-424A, Budget by categories and indirect cost rate.
  - b. SF-424B, Assurances for non-construction programs.
2. Certification regarding lobbying and SF LLL (applicable if EPA funds are over \$100,000).
3. EPA Form 4700-4 pre-award compliance review report.
4. Detailed itemized budget.
5. Copy of negotiated indirect cost rate agreement.
6. Key contacts form.
7. Attorney General’s opinion, as required by 40 CFR §35.3110(d)(2), and 40 CFR §35.3545(d).
8. If applicable, workplans for DWSRF set-asides.

## **III. SUMMARY OF BIL PROVISIONS**

The BIL amends the CWA and SDWA to include several new provisions that apply to both base SRF programs as well as projects funded in whole or in part with funds made available by the BIL. The BIL also includes several provisions specific to projects funded in whole or in part with BIL. These provisions are described below.

All provisions promulgated through statute, guidance, or regulations issued by EPA for the implementation of the CWSRF and DWSRF programs will remain in effect (e.g., American Iron and Steel and Davis-Bacon related prevailing wage requirements) unless they are inconsistent with the BIL, capitalization grant conditions, or the requirements contained in this document. The BIL supplemental appropriations are federal funds and therefore all equivalency requirements apply to projects funded by BIL.

### **A. CWSRF GENERAL SUPPLEMENTAL PROVISIONS**

**1. Eligible Use of Funds:** All CWSRF-eligible projects and activities may be funded from this appropriation.

**2. Match:** BIL contains the following provision:

*“Provided further, That for the funds provided under this paragraph in this Act in fiscal year 2022 and fiscal year 2023, the State shall deposit in the State loan fund from State moneys an amount equal to at least 10 percent of the total amount of the grant to be made to the State, notwithstanding sections 602(b)(2), 602(b)(3) or 202 of the Federal Water Pollution Control Act”*

This language reduces the state match requirement to 10% of the total amount of the capitalization grant in fiscal years 2022 and 2023. The match requirement returns to 20% of the capitalization grant in fiscal year 2024 and thereafter.

**3. Additional Subsidization:** BIL contains the following provision:

*Provided further, That for the funds made available under this paragraph in this Act, forty-nine percent of the funds made available to each State for Clean Water State Revolving Fund capitalization grants shall be used by the State to provide subsidy to eligible recipients in the form of assistance agreements with 100 percent forgiveness of principal or grants (or any combination of these), notwithstanding section 603(i)(3)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1383):*

This language requires states to provide 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 as established under the CWA section 603(i)(2);
- 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; or
- 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.

State Affordability Criteria

Section 603(i)(2) of the CWA specifically requires states 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.<sup>4</sup> The BIL explicitly seeks to ensure that disadvantaged communities have access to funds to improve their wastewater infrastructure to protect public health and improve water quality. Given the level of funding under BIL, the state should review its definition to ensure that it is sufficient to address affordability issues that impact the goals of the Clean Water Act within the state.

Within the CWA statutory framework, 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. EPA recognizes some communities will require assistance in meeting requirements to receive SRF funds and expects states to use the 2% technical assistance funds noted above to attract disadvantaged communities including those previously unable to complete SRF funding requirements. EPA encourages state SRF programs to identify and proactively reach out to disadvantaged communities that have wastewater needs but are not yet on a state PPL. EPA also expects states to offer benefits to

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<sup>4</sup> 40 CFR § 35.3150

disadvantaged communities in addition to additional subsidization, including lower interest rates and extended loan terms.

#### Allocating Additional Subsidy

States must include in the IUP, the amount and type of additional subsidy that is available under each appropriation, the projects that will receive this subsidy, and the respective amounts. The BIL explicitly seeks to ensure that disadvantaged communities receive funds to improve their water and wastewater infrastructure. Although the CWA does not require states to provide additional subsidization only to communities that meet the state's affordability criteria, states are strongly encouraged to use these funds for communities or subsets of communities that are most in need and use the 2% technical assistance funds to provide support necessary to ensure these communities receive needed funding.

Additional information on the management of the additional subsidization can be found in Section IV.B. of this guidance.

### **B. CWSRF EMERGING CONTAMINANTS PROVISIONS**

#### **1. Eligible Use of Funds:** BIL contains the following provision:

*“Provided further, That funds provided under this paragraph in this Act shall be for eligible uses under section 603(c) of the Federal Water Pollution Control Act that address 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. A description of emerging contaminants for the purposes of CWSRF financing can be found in Appendix B.

For a project or activity to be eligible under this appropriation, it must be otherwise eligible under section 603(c) of the CWA and the primary purpose must be to address emerging contaminants. States may utilize an amount up to 2% of this appropriation to provide technical assistance to small, rural, and tribal publicly-owned treatment works. The technical assistance funds must be used in a manner that meets the statutory purpose of this appropriation (“to address emerging contaminants”).

States have the flexibility to craft single assistance agreements (e.g., loans or grants) that contain multiple types of construction components and activities. Given the narrower eligibilities under this appropriation, states must be careful to only charge eligible project components to this appropriation. For a project component to be eligible to receive funds under this appropriation, the primary purpose of that component must be to address emerging contaminants.

#### **2. Match:** BIL contains the following provision:

*“Provided further, That funds provided under this paragraph in this Act shall not be subject to the matching or cost share requirements of sections 602(b)(2), 602(b)(3), or 202 of the Federal Water Pollution Control Act”*

This language waives the requirement of Title VI of the CWA to provide state match for the CWSRF Emerging Contaminants capitalization grant.

**3. Additional Subsidization:** BIL contains the following provision:

*“Provided further, That funds provided under this paragraph in this Act deposited into the state revolving fund shall be provided to eligible recipients as assistance agreements with 100 percent principal forgiveness or as grants (or a combination of these)”*

This language requires states to provide 100% of the capitalization grant amount as additional subsidization in the form of principal forgiveness and/or grants. Additional subsidization may be provided to any eligible CWSRF assistance recipient for any project eligible under section 603(c) of the CWA that addresses emerging contaminants. EPA expects states to review, refine, and improve their CWSRF affordability criteria and priority point systems to ensure that additional subsidy is provided to disadvantaged communities. EPA encourages states to prioritize communities that meet the state’s affordability criteria or communities that do not meet the state’s affordability criteria but seek additional subsidization to benefit individual ratepayers in the residential user rate class in providing additional subsidy, and to use the 2% technical assistance funds to provide the support necessary to ensure these communities receive needed funding.

Additional information on the management of additional subsidization can be found in Section IV.B. of this memorandum.

**C. DWSRF GENERAL SUPPLEMENTAL PROVISIONS**

**1. Eligible Use of Funds:** All DWSRF-eligible projects and set-aside activities may be funded from this appropriation.

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 or is concurrently being replaced with another funding source. To address household affordability concerns, we encourage states to fund the private portion of service line replacements at no additional cost to the homeowner.

**2. Match:** BIL contains the following provision:

*“Provided further, That for the funds provided under this paragraph in this Act in fiscal year 2022 and fiscal year 2023, the State shall deposit in the State loan fund from State moneys an amount equal to at least 10 percent of the total amount of the grant to be made to the State, notwithstanding section 1452(e) of the Safe Drinking Water Act”*

This language reduces the state match to 10% of the total amount of the capitalization grant in fiscal years 2022 and 2023. The match requirement returns to 20% of the capitalization grant in fiscal year 2024 and thereafter.



**3. Additional Subsidization:** BIL contains the following provision:

*“Provided further, That for the funds made available under this paragraph in this Act, forty-nine percent of the funds made available to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide subsidy to eligible recipients in the form of assistance agreements with 100 percent forgiveness of principal or grants (or any combination of these), notwithstanding section 1452(d)(2) of the Safe Drinking Water Act (42 U.S.C. 300j-12)”*

This language requires states to provide 49% of the capitalization grant amount as additional subsidization in the form of principal forgiveness and/or grants. States must provide additional subsidization to water systems that meet the state’s disadvantaged community criteria as described in section 1452(d) of the SDWA. That SDWA subsection defines a “disadvantaged community” as:

*“...the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located.”<sup>5</sup>*

Pursuant to 40 CFR § 35.3555, the 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.

Given the level of funding under BIL, states should review the current disadvantaged community definition to ensure that it is sufficient to address public health and affordability issues within the state. The BIL explicitly seeks to ensure disadvantaged communities have access to funds to improve their water infrastructure to protect public health. EPA 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. EPA recognizes that some communities will require assistance to meet requirements to receive SRF funds and expects states to use set-aside funds to attract and assist disadvantaged communities previously unable to complete SRF funding requirements. EPA encourages state SRF programs to identify and proactively communicate with water systems with health-based violations and significant deficiencies but are not yet on a state PPL. EPA also expects states to offer benefits to disadvantaged communities beyond additional subsidization, as needed, including lower interest rates and extended loan terms.

Additional information on the management of the additional subsidization can be found in Section IV.B. of this guidance.

#### **D. DWSRF EMERGING CONTAMINANTS PROVISIONS**

**1. Eligible Use of Funds:** BIL contains the following provision:

*“Provided further, That funds provided under this paragraph in this Act shall be to address emerging contaminants in drinking water with a focus on perfluoroalkyl and*

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<sup>5</sup> 42 U.S.C. 300j-12 (d)(3)

*polyfluoroalkyl substances through capitalization grants under section 1452(t) of the Safe Drinking Water Act for the purposes described in section 1452(a)(2)(G) of such Act”*

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 (hereinafter PFAS), EPA expects states to actively solicit and prioritize PFAS-focused projects. States, however, have the flexibility to fund projects for any contaminant in any of EPA’s [Contaminant Candidate Lists](#). For example, EPA also encourages states to consider using these funds to address perchlorate as well as contaminants that have higher levels of occurrence or health concerns.

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. For example, a project for which the primary purpose is to address arsenic or nitrate in drinking water is not eligible because arsenic and nitrate are regulated under the NPDWRs. It should be noted that these projects may be eligible for funding under the DWSRF Base or General Supplemental appropriations.

EPA expects to establish a [NPDWR](#) for PFOA and PFOS. The Agency is also evaluating additional PFAS and groups of PFAS. Given stated Congressional intent of this appropriation, PFAS-focused projects will be eligible for funding under this appropriation regardless of whether EPA has established a NPDWR for that particular PFAS or group of PFAS. More information on PFAS is located here: <https://www.epa.gov/pfas>.

Congress has established multiple set-asides under the DWSRF. States have the flexibility to take set-asides from this appropriation. Set-asides must be used to either administer this capitalization grant or meet the statutory purpose of these funds: “to address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances.”

Appendix C contains examples of projects and activities eligible for funding under this DWSRF appropriation.

EPA recommends that states coordinate with other funding programs, such as the Assistance for Small and Disadvantaged Communities Grant program, SDWA 1459A, that also received BIL funding specifically 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. Given the narrower eligibilities under this appropriation, states must be careful to only charge eligible project components to this appropriation. For a project component to be eligible to receive funds under this appropriation, the primary purpose of that component must be to address emerging contaminants. For example, if an assistance agreement includes the construction of both an activated carbon treatment facility (whose primary purpose is to treat PFAS) *and* the replacement of water mains (whose primary purpose is to replace failing pipes as part of the water system’s capital improvement plan), only the activated carbon treatment facility may be charged to this capitalization grant.

**2. Match:** BIL contains the following provision:

*“Provided further, That funds provided under this paragraph in this Act shall not be subject to the matching or cost share requirements of section 1452(e) of the Safe Drinking Water Act”*

This language waives the requirement of section 1452(e) of the SDWA to provide state match for the emerging contaminants capitalization grant.

**3. Additional Subsidization:** BIL contains the following provision:

*“Provided further, That funds provided under this paragraph in this Act deposited into the State revolving fund shall be provided to eligible recipients as loans with 100 percent principal forgiveness or as grants (or a combination of these)”*

This language requires states to provide 100% of the capitalization grant amount, net of set-asides taken, as additional subsidization in the form of principal forgiveness and/or grants. Per SDWA, 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.<sup>6</sup> EPA encourages states to offer benefits to disadvantaged communities in addition to grants and/or principal forgiveness including lower interest rates and extended loan terms.

Pursuant to 40 CFR § 35.3555, the 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.

Given the level of funding under BIL, this is an opportunity for the state to review its disadvantaged community definition to ensure that it is sufficient to address public health and affordability issues within the state as well as be broad enough to accommodate this increased SRF funding. The BIL explicitly seeks to ensure that disadvantaged communities have access to funds to improve their water infrastructure to address public health concerns. EPA encourages states to identify potential opportunities to refine and improve their DWSRF disadvantaged community definitions and priority point systems to ensure additional subsidy is provided to disadvantaged communities and communities with affordability concerns to the maximum extent possible.

Additional information on the management of the additional subsidization can be found in Section IV.B. of this guidance.

## **E. DWSRF LEAD SERVICE LINE REPLACEMENT PROVISIONS**

**1. Eligible Use of Funds:** BIL contains the following provision:

*“Provided further, That the funds provided under this paragraph in this Act shall be for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines”*

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<sup>6</sup> 42 U.S.C. 300j-12 (a)(2)(G)(ii)(I)

For a project or activity to be eligible for funding under this appropriation, 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 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 or is concurrently being replaced with another funding source. To address household affordability concerns and to minimize adverse public health effects, we encourage states to fund the private portion of service line replacements at no additional cost to the homeowner.

To define a “lead service line” for the purpose of this appropriation, EPA will use an amended version of the [Lead and Copper Rule Revisions](#)’ regulatory definition, which is,

*“...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.

Appendix D contains examples of eligible projects and activities under this appropriation. Corrosion control studies, corrosion control infrastructure, and water meters are not eligible under this appropriation, but are eligible under the DWSRF base program and BIL General Supplemental. Consistent with the base DWSRF program, funding for bottled water and premise plumbing are not eligible under this appropriation. 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 are eligible.

Congress has established multiple set-asides under the DWSRF. States have the flexibility to take set-asides from this appropriation. Set-asides must be used to either administer this capitalization grant or meet the statutory purpose of these funds: “for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines.”

Under the DWSRF program, states have the flexibility to craft single assistance agreements (e.g., loans or grants) that contain multiple types of construction components and activities. Given the narrower eligibilities under this appropriation, states must be careful to only charge eligible project components consistent with the purpose of this appropriation. For example, if an assistance agreement includes the replacement of lead service lines and the replacement of water mains, only the LSLR and associated components may be charged to this capitalization grant.

**2. Match:** BIL contains the following provision:

*“Provided further, That the funds provided under this paragraph in this Act shall not be subject to the matching or cost share requirements of section 1452(e) of the Safe Drinking Water Act”*

This language waives the requirement of section 1452(e) of the SDWA to provide state match for the lead service line capitalization grant.

**3. Additional Subsidization:** BIL contains the following provision:

*“Provided further, That for the funds made available under this paragraph in this Act, forty-nine percent of the funds made available to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide subsidy to eligible recipients in the form of assistance agreements with 100 percent forgiveness of principal or grants (or any combination of these), notwithstanding section 1452(d)(2) of the Safe Drinking Water Act (42 U.S.C. 300j-12)”*

This language requires states to provide 49% of the capitalization grant amount as additional subsidization in the form of principal forgiveness and/or grants. States must provide additional subsidization to water systems that meet the state’s disadvantaged community criteria as described in section 1452(d) of SDWA. That SDWA subsection defines a “disadvantaged community” as:

*“...the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located.”<sup>7</sup>*

Pursuant to 40 CFR § 35.3555, the 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.

Given the level of funding under BIL, the state should review its disadvantaged community definition to ensure that it is sufficient to address public health and affordability issues within the state. The BIL explicitly seeks to ensure that disadvantaged communities have access to funds to improve their water infrastructure. EPA 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. EPA recognizes that some communities will need assistance to meet requirements to receive SRF funds and expects states to use set-aside funds to support disadvantaged communities previously unable to complete SRF funding requirements. EPA encourages state SRF programs to identify and proactively reach out to disadvantaged communities that could benefit from this funding but are not yet on a state PPL. EPA also expects states to offer benefits to disadvantaged communities beyond additional subsidization, including lower interest rates and extended loan terms.

Additional information on the management of the additional subsidization can be found in Section IV.B. of this guidance.

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<sup>7</sup> 42 U.S.C. 300j-12 (d)(3)

## F. OTHER APPLICABLE PROVISIONS

1. **Equivalency:** BIL supplemental appropriations are federal funds and therefore all equivalency requirements apply to projects funded by each BIL capitalization grant. Projects funded through the base SRF programs cannot be used to meet the equivalency requirements of the BIL capitalization grants. Each BIL capitalization grant must meet the equivalency requirements separately.

2. **Build America, Buy America Act:** BIL creates the Build America, Buy America (BABA) Act domestic sourcing requirements for Federal financial assistance programs for infrastructure, including the SRF programs.<sup>8</sup> For more specific information on BABA implementation, please refer to the Office of Management and Budget's Build America, Buy America Act Implementation Guidance. 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.

3. **Reporting:** Transparency and consistency is of the utmost importance to ensure that the funds are being used effectively and efficiently. States must use EPA's SRF Data System to report key BIL project characteristics and milestone information no less than quarterly. Additional reporting will be required through the terms and conditions of the grant award.

The Federal Funding Accountability and Transparency Act (FFATA) of 2010 requires SRF programs to report on recipients that received federal dollars in the FFATA Subaward Reporting System ([www.fsr.gov](http://www.fsr.gov)). FFATA reporting must exactly equal the capitalization grant amount.

4. **Blending Funds and Cash Draws:** States have the flexibility to craft single assistance agreements (e.g., loans) that contain multiple types of construction components and activities. These assistance agreements may commit funds from multiple BIL capitalization grants and base program funds. Upon disbursement of funds, these assistance agreements may draw from both BIL and base SRF capitalization grants for eligible project components. For example, state DWSRF programs may sign a single loan with a community water system for a project to replace lead service lines *and* replace water mains. In that example, the state may draw funds from the BIL DWSRF LSLR appropriation for the eligible LSLR project components and the 2022 DWSRF base appropriation for the water main components.

BIL and base funds must be separately managed and tracked for accounting purposes. States are encouraged to draw BIL funds first when projects are funded with both BIL and base funds.

5. **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.

6. **Inter-SRF Transfers:** Per SRF statute and regulation, states have the flexibility to transfer funds between the CWSRF and DWSRF.<sup>9</sup> Given BIL's requirements, authorities, and narrower SRF eligibilities, states may only transfer funds between the specific BIL appropriations in the equivalent CWSRF or DWSRF program. In other words, states may only transfer funds between the CWSRF and DWSRF General BIL capitalization grants and between the CWSRF and

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<sup>8</sup> BIL §70901

<sup>9</sup> 42 U.S.C. 300j- 12 note and 40 CFR § 35.3530(c)

DWSRF BIL Emerging Contaminants capitalization grants. Because there is no similar CWSRF appropriation to the DWSRF BIL LSLR appropriation, no funds may be transferred from or to the DWSRF BIL LSLR appropriation. States may not transfer BIL appropriations to or from base appropriations.

Transfers do not impact the state match calculation, the set-asides calculations in the DWSRF, or the administration and 2% technical assistance calculations in the CWSRF. Those calculations are based upon the original capitalization grant allotment amounts for each SRF.

All BIL supplemental funds are federal capitalization grant funds. Therefore, transferred funds carry the same requirements from the transferring SRF with respect to additional subsidization and GPR. For example, if a state's original BIL General allotments are \$60M for DWSRF and \$30M for CWSRF and the state chooses to transfer \$10M from the DWSRF grant to the CWSRF grant, then the post-transfer capitalization grants will be \$50M for DWSRF and \$40M for CWSRF and the state must calculate the additional subsidy requirement using those *post-transfer* amounts.

States also have the flexibility to reserve *authority* for BIL inter-SRF transfers and use that authority in later years from subsequent BIL appropriations.<sup>10</sup> Funds may be transferred between the CWSRF and DWSRF on a net basis, as long as the statutory 33% ceiling is not breached. Transfers of BIL CWSRF and DWSRF Emerging Contaminants Supplemental funds are calculated based on BIL DWSRF Emerging Contaminants Supplemental allotments.

For details on inter-SRF transfers, see the [SRF Transfer Policy](#).

**7. Reservation of DWSRF Set-Aside Authority:** Consistent with the DWSRF regulations, states have the flexibility to reserve the *authority* (under the 2%, 4%, and 10% set-asides) to take from future capitalization grants those set-aside funds they have not included in workplans.<sup>11</sup> However, given the narrower eligibilities under the BIL Emerging Contaminants and LSLR appropriations, future use of authority reserved under those BIL capitalization grants will be limited to eligible uses under those grants. For example, reserved authority for LSLR set-asides can only be used in the future for BIL LSLR eligible set-aside activities. Reserved authority for Emerging Contaminants set-asides can only be used in the future for BIL Emerging Contaminants-eligible set-aside activities.

**8. Recycled Funds:** To the extent assistance recipients repay BIL funds or provide interest payments to the state SRF program, those repaid funds and interest have the flexibility to be used for any SRF-eligible purpose. For example, repaid DWSRF BIL LSLR funds are not limited to future LSLR projects and activities.

**9. Potential State Match Flexibility:** To support implementation of the SRF program, the Department of the Treasury has determined that State and Local Financial Recovery Funds under the American Rescue Plan Act (ARPA) available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the DWSRF and CWSRF programs. EPA

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<sup>10</sup> 40 CFR §35.3530(c)(4)

<sup>11</sup> 40 CFR §35.3540(d)(2)

will be providing a fact sheet in the near future to state SRF programs to support utilization of this additional flexibility.

**10. Federal Civil Rights Responsibilities, Including Title VI of the Civil Rights Act of 1964:**

In 1994, [Executive Order 12898](#)<sup>12</sup> was issued to direct Federal agencies to incorporate achieving environmental justice into their mission. The Presidential Memorandum<sup>13</sup> accompanying that Executive Order required in part, that consistent with Title VI of the Civil Rights Act of 1964, each Federal agency “...ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”<sup>14</sup>

EPA has a responsibility to ensure that recipients and subrecipients of federal financial assistance from EPA comply with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin (including limited English proficiency), disability, sex and age, including Title VI of the Civil Rights Act of 1964.<sup>15</sup>

EPA’s implementing regulation generally prohibits discrimination in any programs, activities and services receiving federal financial assistance. 40 CFR § 7.30. In addition, EPA’s implementing regulations at 40 CFR § 7.35, states that programs or activities receiving EPA assistance “shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, or national origin...”:

- Subject a person to segregation or separate treatment;
- Deny a person or group the opportunity to participate as members of any planning or advisory body;
- Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program;
- Use criteria or methods of administration “which have the effect of subjecting individuals to discrimination;” or
- Choose a site or location of a facility with “the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination,” among other things.

EPA’s nondiscrimination regulation in 40 CFR Parts 5 and 7 also contain longstanding procedural requirements applicable to applicants for and recipients (including sub-recipients) of EPA financial assistance.<sup>16</sup> These requirements include having a notice of nondiscrimination, nondiscrimination coordinator, grievance procedures, a process for collecting and maintaining nondiscrimination compliance information, and pursuant to Title VI and the Rehabilitation Act of 1973, developing policies and procedures for ensuring meaningful access to programs and

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<sup>12</sup> Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994.

<sup>13</sup> Presidential Memorandum on Executive Order for Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (pdf).

<sup>14</sup> *Id.*

<sup>15</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., 29 U.S.C. § 794, Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92 500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 CFR Parts 5 and 7.

<sup>16</sup> EPA’s nondiscrimination regulation at 40 CFR Parts 5 and 7 requires recipients to establish and implement their own nondiscrimination programs. *See* 40 CFR §§ 7.80-7.100.



activities for individuals with limited-English proficiency and individuals with disabilities. In addition, recipients' public participation processes must also be implemented consistent with the federal civil rights laws.<sup>17</sup>

EPA intends to carefully evaluate the implementation of BIL SRF funding to ensure compliance with civil rights laws by recipients of EPA funding and to confirm no community is excluded from receiving or denied benefit of SRF funding based on race, color, national origin (including limited English proficiency), age, disability or sex. EPA expects the state to review program activities to ensure compliance with Title VI of the Civil Rights Act of 1964 and make an affirmative statement documenting the review and commitment to Title VI requirements in IUPs. Further, financial award agreements and contracts must include appropriate Title VI nondiscrimination language.

For more information about the federal civil rights laws enforced by EPA, including Title VI, please visit: <https://www.epa.gov/ocr/title-vi-laws-and-regulations> and <https://www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi>.

## IV. PROGRAM IMPLEMENTATION

### A. EXPEDITIOUS COMMITMENTS AND EXPEDITURES

BIL funds must be committed and expended in an expeditious and timely manner, consistent with law, regulation, and guidance. 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.<sup>18</sup> States must make effort to draw down (expend) funds within two years of capitalization grant award.

### B. MANAGEMENT OF ADDITIONAL SUBSIDIZATION

1. **Opportunities to Address Disadvantaged Communities and Affordability:** The BIL is designed to rebuild America's infrastructure and invest in communities that have too often been left behind – from rural towns to struggling cities. The level of funding provided under BIL and the amount of additional subsidy available that must be directed to these communities presents a unique opportunity for the SRF programs. The CWA and SDWA require states to develop “affordability criteria” and definitions of “disadvantaged communities” to best address

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<sup>17</sup> See Title VI, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 CFR § 7.35(a). See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (available at [https://www.epa.gov/sites/production/files/2020-02/documents/title\\_vi\\_lep\\_guidance\\_for\\_epa\\_recipients\\_2004.06.25.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf)); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at [https://www.epa.gov/sites/production/files/2020-02/documents/title\\_vi\\_public\\_involvement\\_guidance\\_for\\_epa\\_recipients\\_2006.03.21.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)); U.S. EPA, Procedural Safeguards Checklist for Recipients, at [https://www.epa.gov/sites/production/files/2020-02/documents/procedural\\_safeguards\\_checklist\\_for\\_recipients\\_2020.01.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf) (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at [https://www.epa.gov/sites/production/files/2020-02/documents/disability\\_nondiscrimination\\_plan\\_sample\\_for\\_recipients\\_2020.01.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf). (2017).

<sup>18</sup> 33 U.S.C. §1382(b)(3) and 40 CFR §35.3550(e)(1)

affordability needs consistent with other laws, including federal non-discrimination statutes, such as, Title VI of the Civil Rights Act of 1964, discussed above.

Given this new influx of funding, EPA expects states to review, refine, and improve as necessary, their disadvantaged community definition and affordability criteria to ensure that they are reflective of current affordability issues within the state. In Appendix E, EPA provides examples of factors that states may consider in updating their disadvantaged community definition or affordability criteria. States must include the disadvantaged community definition and the state affordability criteria in the IUP, which provides an opportunity for meaningful public review and comment.

EPA is committed to working with states to ensure additional subsidy is provided to disadvantaged communities and communities with affordability concerns to the maximum extent possible. EPA will use a variety of tools to accomplish this goal:

- **Review of the Effective Integration of the Program to Reach Disadvantaged Communities:** Recognizing that the communities in greatest need are often the least equipped or prepared to move forward with an SRF project and application, EPA will review how the state is utilizing the flexibilities and set-asides to support the disadvantaged communities' efforts to undertake deficiency or need identification, project development, and preliminary engineering steps that are necessary to apply for funding. States should also make funding sources available to communities for planning, design, and other pre-projects costs, as these steps can be a barrier to communities working to access SRF funding for water infrastructure needs. Working collaboratively, EPA and SRF programs can make progress towards Justice40, which aims to ensure that federal agencies deliver at least 40% of benefits from certain investments to disadvantaged communities.
- **Review of Disadvantaged Community Definition and Affordability Criteria:** EPA will review IUPs with a particular focus on the definition of disadvantaged community, state affordability criteria, and communities on the PPL slated for additional subsidization. EPA will actively work with states to identify potential opportunities to refine and improve DWSRF disadvantaged community definitions and CWSRF affordability criteria to be consistent with the language and intent of SDWA and the CWA.
- **Reaching Disadvantaged 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 where the assistance 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 if additional subsidization is not provided. 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.

- **Terms and Conditions of State Grants:** EPA will provide a term and condition on the grants detailing the amount and eligible uses of additional subsidy to meet statutory language and congressional intent to ensure that disadvantaged communities that have historically struggled to access SRF funding can do so through the BIL.
  - **Reallocation and Partial Awards:** States must identify in the IUP sufficient eligible projects that will receive additional subsidization. States that are unable to identify sufficient eligible projects may receive partial grant awards until they are able to fund sufficient communities or projects that meet the criteria for receiving additional subsidization. Funds will be reallocated in instances where states are unable to identify sufficient eligible communities or projects to receive additional subsidization by the end of the second fiscal year of grant availability. This is consistent with both SRF statutes.
  - **Oversight:** EPA will discuss the state’s affordability criteria and disadvantaged community definition during the capitalization grant application process and annual review so that any needed adjustments can be made for BIL funding. One focus will be how project priority systems support the goal of reaching disadvantaged communities and address the most serious risks to human health. EPA will amend the annual review checklist to include detailed questions related to additional subsidization assistance to disadvantaged communities, capacity development, technical assistance, and solicitation.
2. **Eligible Forms of Additional Subsidy:** Loans with principal forgiveness and grants are the only authorized methods states may use to deliver BIL additional subsidy to assistance recipients.
  3. **Calculation of Additional Subsidization Provided:** Appendix A includes additional subsidy tables for each state and BIL appropriation. The additional subsidization requirement is considered met when the subsidy funds required have been disbursed. Each state must report on the use of additional subsidization in the SRF Reporting System and in the state’s Annual or Biennial Report.
  4. **Eligible Recipients of Additional Subsidy:** For the CWSRF General Supplemental, the DWSRF General Supplemental, and the DWSRF LSLR funding, BIL requires 49% of the funds be made available as additional subsidy. Congress specified that it made this appropriation “notwithstanding” the specific provisions of the CWA and SDWA (CWA 603(i)(3)(B) and SDWA1452(d)(2)) that provide for minimum and maximum percentages that may be additional subsidy. In doing so, Congress made clear its intent that the only-exception it was making to EPA’s underlying authority was to the provision specifying the minimum and maximum additional subsidization levels and not to any of the other provisions regarding additional subsidization. Therefore, Congress expected the other limitations on additional subsidization, including the limitation to the eligible uses, to remain intact. For the DWSRF, states must provide additional subsidization to water systems that meet the state’s disadvantaged community criteria as described in section 1452(d) of the SDWA, and for the CWSRF additional subsidy must be provided to eligible CWSRF assistance recipients or project types as described in section 603(i) of the CWA.

For the CWSRF Emerging Contaminants Funding, BIL requires 100% of the funds be made available as additional subsidy. For this funding, Congress did not use the “notwithstanding” language. Therefore, as it has in prior appropriations bills containing similar language, Congress is creating a new subsidization program separate from the statutorily authorized program which provides additional subsidy to any eligible CWSRF assistance recipient for any project eligible under section 603(c) of the CWA that addresses emerging contaminants.

For the DWSRF Emerging Contaminants funding, BIL requires 100% of the funding to be made available as additional subsidy. For this funding, Congress did not use the “notwithstanding” language. In addition, in the SDWA, Congress established separate provisions for emerging contaminants (SDWA §1452(a)(2)(G)). Appropriations language in the BIL can be read along with the DWSRF provisions in the SDWA – there is no conflict between the provisions in the BIL and the SDWA statutory provision. Therefore, with respect to the DWSRF Emerging Contaminants appropriation, each state must provide at least 25% of the funds to either disadvantaged communities (as defined in subsection (d)(3)) or public water systems serving fewer than 25,000 persons that address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances.

5. **Structuring Assistance Agreements:** Assistance agreements may include any combination of additional subsidization (i.e., principal forgiveness or grant) and repayable financing, subject to the limitations of the BIL. For example, a state might structure a \$1 million loan to include \$200,000 of repayable principal and \$800,000 of forgiven principal. In that example, the \$800,000 in principal forgiveness counts towards the limitations of the BIL. A state may structure an individual assistance agreement to provide 100% principal forgiveness, as well. The state has the flexibility to determine the amount of additional subsidization provided in a given assistance agreement.
6. **Laws, Regulations, and Requirements for Assistance Agreements in the Form of Grants:** BIL allows state CWSRF and DWSRF programs to provide grants to eligible recipients. States should be aware that “grant” recipients are legally considered “subrecipients” for the purposes of OMB’s grant regulations at 2 CFR Part 200 *et. seq.* In other words, assistance recipients receiving additional subsidy in the form of a grant are subject to additional cross-cutting federal requirements not applicable to those receiving other forms of additional subsidy. EPA’s [subaward policy](#) establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 CFR 200.331, 200.332, and 200.333 (“the applicable regulations”).

Note that the use of a “grant” as an additional subsidy instrument does not change the established SRF cash draw rules.<sup>19</sup> SRF assistance recipients (e.g., a water or wastewater system) must first incur a cost associated with an executed assistance agreement for the state SRF to have the authority to draw capitalization grant funds from the Treasury and disburse those funds to the assistance recipient.

## C. REALLOTMENT

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<sup>19</sup> 40 CFR §35.3155(d)(2) and §35.3565(a)(1)

Consistent with the CWA and SDWA,<sup>20</sup> EPA will reallocate unobligated BIL funds after the second fiscal year of availability. The procedure is explained in *State Revolving Fund Capitalization Grant Reallotment Procedure* memorandum, September 2020.

## **V. EPA Oversight**

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).

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<sup>20</sup> 33 U.S.C. §1384(c)(2) and 42 U.S.C. 300j-12 (a)(1)(E)

**Attachment 1 – Appendix A:  
Bipartisan Infrastructure Law: Environmental Protection Agency  
2022 State Revolving Fund (SRF) Grants to States, Tribes, and Territories by  
Program**

	<b>DWSRF General</b>	<b>DWSRF Lead Service Line Replacement</b>	<b>DWSRF Emerging Contaminants</b>	<b>CWSRF General</b>	<b>CWSRF Emerging Contaminants</b>
Alabama	\$38,787,000	\$61,114,000	\$16,286,000	\$19,901,000	\$1,045,000
Alaska	\$17,992,000	\$28,350,000	\$7,555,000	\$10,652,000	\$559,000
Arizona	\$32,359,000	\$50,986,000	\$13,587,000	\$12,021,000	\$632,000
Arkansas	\$27,070,000	\$42,653,000	\$11,367,000	\$11,642,000	\$612,000
California	\$158,733,000	\$250,107,000	\$66,649,000	\$127,290,000	\$6,687,000
Colorado	\$35,550,000	\$56,015,000	\$14,927,000	\$14,236,000	\$747,000
Connecticut	\$17,992,000	\$28,350,000	\$7,555,000	\$21,804,000	\$1,145,000
Delaware	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
District of Columbia	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
Florida	\$70,829,000	\$111,601,000	\$29,741,000	\$60,077,000	\$3,156,000
Georgia	\$42,400,000	\$66,808,000	\$17,804,000	\$30,092,000	\$1,581,000
Hawaii	\$17,992,000	\$28,350,000	\$7,555,000	\$13,785,000	\$724,000
Idaho	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
Illinois	\$67,885,000	\$106,964,000	\$28,505,000	\$80,494,000	\$4,229,000
Indiana	\$27,502,000	\$43,334,000	\$11,548,000	\$42,893,000	\$2,253,000
Iowa	\$28,504,000	\$44,913,000	\$11,969,000	\$24,088,000	\$1,265,000
Kansas	\$20,875,000	\$32,891,000	\$8,765,000	\$16,065,000	\$844,000
Kentucky	\$29,649,000	\$46,717,000	\$12,450,000	\$22,652,000	\$1,190,000
Louisiana	\$26,930,000	\$42,433,000	\$11,308,000	\$19,565,000	\$1,028,000
Maine	\$17,992,000	\$28,350,000	\$7,555,000	\$13,777,000	\$724,000
Maryland	\$32,960,000	\$51,934,000	\$13,840,000	\$43,046,000	\$2,261,000
Massachusetts	\$41,750,000	\$65,783,000	\$17,531,000	\$60,428,000	\$3,175,000
Michigan	\$44,168,000	\$69,593,000	\$18,546,000	\$76,528,000	\$4,020,000
Minnesota	\$27,465,000	\$43,276,000	\$11,533,000	\$32,713,000	\$1,719,000
Mississippi	\$19,368,000	\$30,518,000	\$8,133,000	\$16,035,000	\$842,000
Missouri	\$31,720,000	\$49,980,000	\$13,319,000	\$49,339,000	\$2,592,000
Montana	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
Nebraska	\$17,992,000	\$28,350,000	\$7,555,000	\$9,103,000	\$478,000
Nevada	\$20,857,000	\$32,864,000	\$8,758,000	\$8,738,000	\$459,000
New Hampshire	\$17,992,000	\$28,350,000	\$7,555,000	\$17,786,000	\$935,000
New Jersey	\$30,708,000	\$48,385,000	\$12,894,000	\$72,730,000	\$3,821,000
New Mexico	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
New York	\$73,481,000	\$115,781,000	\$30,854,000	\$196,443,000	\$10,318,000
North Carolina	\$55,254,000	\$87,062,000	\$23,201,000	\$32,122,000	\$1,688,000
North Dakota	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000

	<b>DWSRF General</b>	<b>DWSRF Lead Service Line Replacement</b>	<b>DWSRF Emerging Contaminants</b>	<b>CWSRF General</b>	<b>CWSRF Emerging Contaminants</b>
Ohio	\$45,251,000	\$71,300,000	\$19,001,000	\$100,195,000	\$5,264,000
Oklahoma	\$25,508,000	\$40,192,000	\$10,711,000	\$14,379,000	\$755,000
Oregon	\$23,673,000	\$37,300,000	\$9,940,000	\$20,106,000	\$1,056,000
Pennsylvania	\$55,403,000	\$87,296,000	\$23,264,000	\$70,500,000	\$3,704,000
Puerto Rico	\$17,992,000	\$28,350,000	\$7,555,000	\$23,214,000	\$1,220,000
Rhode Island	\$17,992,000	\$28,350,000	\$7,555,000	\$11,950,000	\$628,000
South Carolina	\$23,302,000	\$36,716,000	\$9,784,000	\$18,233,000	\$958,000
South Dakota	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
Tennessee	\$31,253,000	\$49,243,000	\$13,123,000	\$25,855,000	\$1,358,000
Texas	\$140,993,000	\$222,155,000	\$59,202,000	\$81,347,000	\$4,274,000
Utah	\$17,992,000	\$28,350,000	\$7,555,000	\$9,378,000	\$493,000
Vermont	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
Virginia	\$29,357,000	\$46,256,000	\$12,327,000	\$36,424,000	\$1,914,000
Washington	\$40,196,000	\$63,336,000	\$16,878,000	\$30,951,000	\$1,626,000
West Virginia	\$17,992,000	\$28,350,000	\$7,555,000	\$27,745,000	\$1,457,000
Wisconsin	\$30,666,000	\$48,319,000	\$12,877,000	\$48,116,000	\$2,527,000
Wyoming	\$17,992,000	\$28,350,000	\$7,555,000	\$8,738,000	\$459,000
<b>States Total</b>	<b>1,772,254,000</b>	<b>2,792,475,000</b>	<b>\$744,167,000</b>	<b>\$1,753,080,000</b>	<b>\$92,094,000</b>
American Samoa	\$6,778,000	\$10,680,000	\$2,846,000	\$9,997,000	\$526,000
Guam	\$6,301,000	\$9,928,000	\$2,646,000	\$7,234,000	\$380,000
Northern Marianas	\$5,305,000	\$8,359,000	\$2,228,000	\$4,646,000	\$245,000
Virgin Islands	\$8,605,000	\$13,558,000	\$3,613,000	\$5,802,000	\$305,000
<b>Territories Total</b>	<b>\$26,989,000</b>	<b>\$42,525,000</b>	<b>\$11,333,000</b>	<b>\$27,679,000</b>	<b>\$1,456,000</b>
<b>Tribes</b>	<b>\$38,040,000</b>	<b>\$60,000,000</b>	<b>\$16,000,000</b>	<b>\$38,040,000</b>	<b>\$2,000,000</b>
<b>CWA 604(b) Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$17,984,000</b>	<b>\$950,000</b>
<b>EPA Admin</b>	<b>\$57,060,000</b>	<b>\$90,000,000</b>	<b>\$24,000,000</b>	<b>\$57,060,000</b>	<b>\$3,000,000</b>
<b>OIG Oversight</b>	<b>\$6,657,000</b>	<b>\$15,000,000</b>	<b>\$4,000,000</b>	<b>\$6,657,000</b>	<b>\$500,000</b>
<b> AIS M &amp; O</b>	<b>\$1,000,000</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$1,500,000</b>	<b>\$0</b>
<b>Grand Total</b>	<b>\$1,902,000,000</b>	<b>\$3,000,000,000</b>	<b>\$800,000,000</b>	<b>\$1,902,000,000</b>	<b>\$100,000,000</b>

**Bipartisan Infrastructure Law:  
Environmental Protection Agency  
2022 Clean Water Act (CWA) 604(b) Grants to States and Territories by Program**

	<b>604(b)</b>	<b>604(b) Emerging Contaminants</b>	<b>604(b) BIL Total</b>
Alabama	\$201,000	\$11,000	\$212,000
Alaska	\$108,000	\$6,000	\$114,000
Arizona	\$121,000	\$6,000	\$127,000
Arkansas	\$118,000	\$6,000	\$124,000
California	\$1,286,000	\$68,000	\$1,354,000
Colorado	\$144,000	\$8,000	\$152,000
Connecticut	\$220,000	\$12,000	\$232,000
Delaware	\$88,000	\$5,000	\$93,000
District of Columbia	\$88,000	\$5,000	\$93,000
Florida	\$607,000	\$32,000	\$639,000
Georgia	\$304,000	\$16,000	\$320,000
Hawaii	\$139,000	\$7,000	\$146,000
Idaho	\$88,000	\$5,000	\$93,000
Illinois	\$813,000	\$43,000	\$856,000
Indiana	\$433,000	\$23,000	\$456,000
Iowa	\$243,000	\$13,000	\$256,000
Kansas	\$162,000	\$9,000	\$171,000
Kentucky	\$229,000	\$12,000	\$241,000
Louisiana	\$198,000	\$10,000	\$208,000
Maine	\$139,000	\$7,000	\$146,000
Maryland	\$435,000	\$23,000	\$458,000
Massachusetts	\$610,000	\$32,000	\$642,000
Michigan	\$773,000	\$41,000	\$814,000
Minnesota	\$330,000	\$17,000	\$347,000
Mississippi	\$162,000	\$9,000	\$171,000
Missouri	\$498,000	\$26,000	\$524,000
Montana	\$88,000	\$5,000	\$93,000
Nebraska	\$92,000	\$5,000	\$97,000
Nevada	\$88,000	\$5,000	\$93,000
New Hampshire	\$180,000	\$9,000	\$189,000
New Jersey	\$735,000	\$39,000	\$774,000
New Mexico	\$88,000	\$5,000	\$93,000
New York	\$1,984,000	\$104,000	\$2,088,000
North Carolina	\$324,000	\$17,000	\$341,000
North Dakota	\$88,000	\$5,000	\$93,000
Ohio	\$1,012,000	\$53,000	\$1,065,000



	<b>604(b)</b>	<b>604(b) Emerging Contaminants</b>	<b>604(b) BIL Total</b>
Oklahoma	\$145,000	\$8,000	\$153,000
Oregon	\$203,000	\$11,000	\$214,000
Pennsylvania	\$712,000	\$37,000	\$749,000
Puerto Rico	\$234,000	\$12,000	\$246,000
Rhode Island	\$121,000	\$6,000	\$127,000
South Carolina	\$184,000	\$10,000	\$194,000
South Dakota	\$88,000	\$5,000	\$93,000
Tennessee	\$261,000	\$14,000	\$275,000
Texas	\$822,000	\$43,000	\$865,000
Utah	\$95,000	\$5,000	\$100,000
Vermont	\$88,000	\$5,000	\$93,000
Virginia	\$368,000	\$19,000	\$387,000
Washington	\$313,000	\$16,000	\$329,000
West Virginia	\$280,000	\$15,000	\$295,000
Wisconsin	\$486,000	\$26,000	\$512,000
Wyoming	\$88,000	\$5,000	\$93,000
<b>States Total</b>	<b>\$17,704,000</b>	<b>\$936,000</b>	<b>\$18,640,000</b>
American Samoa	\$101,000	\$5,000	\$106,000
Guam	\$73,000	\$4,000	\$77,000
Northern Marianas	\$47,000	\$2,000	\$49,000
Virgin Islands	\$59,000	\$3,000	\$62,000
<b>Territories Total</b>	<b>\$280,000</b>	<b>\$14,000</b>	<b>\$294,000</b>
<b>Grand Total</b>	<b>\$17,984,000</b>	<b>\$950,000</b>	<b>\$18,934,000</b>

**Bipartisan Infrastructure Law:  
Environmental Protection Agency  
2022 State Revolving Fund (SRF) Additional Subsidy Amounts**

	<b>DWSRF General<sup>21</sup></b>	<b>DWSRF Lead Service Line Replacement<sup>22</sup></b>	<b>DWSRF Emerging Contaminants<sup>23</sup></b>	<b>CWSRF General<sup>24</sup></b>	<b>CWSRF Emerging Contaminants<sup>25</sup></b>
Alabama	\$19,005,630	\$29,945,860	\$16,286,000	\$9,751,490	\$1,045,000
Alaska	\$8,816,080	\$13,891,500	\$7,555,000	\$5,219,480	\$559,000
Arizona	\$15,855,910	\$24,983,140	\$13,587,000	\$5,890,290	\$632,000
Arkansas	\$13,264,300	\$20,899,970	\$11,367,000	\$5,704,580	\$612,000
California	\$77,779,170	\$122,552,430	\$66,649,000	\$62,372,100	\$6,687,000
Colorado	\$17,419,500	\$27,447,350	\$14,927,000	\$6,975,640	\$747,000
Connecticut	\$8,816,080	\$13,891,500	\$7,555,000	\$10,683,960	\$1,145,000
Delaware	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
Florida	\$34,706,210	\$54,684,490	\$29,741,000	\$29,437,730	\$3,156,000
Georgia	\$20,776,000	\$32,735,920	\$17,804,000	\$14,745,080	\$1,581,000
Hawaii	\$8,816,080	\$13,891,500	\$7,555,000	\$6,754,650	\$724,000
Idaho	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
Illinois	\$33,263,650	\$52,412,360	\$28,505,000	\$39,442,060	\$4,229,000
Indiana	\$13,475,980	\$21,233,660	\$11,548,000	\$21,017,570	\$2,253,000
Iowa	\$13,966,960	\$22,007,370	\$11,969,000	\$11,803,120	\$1,265,000
Kansas	\$10,228,750	\$16,116,590	\$8,765,000	\$7,871,850	\$844,000
Kentucky	\$14,528,010	\$22,891,330	\$12,450,000	\$11,099,480	\$1,190,000
Louisiana	\$13,195,700	\$20,792,170	\$11,308,000	\$9,586,850	\$1,028,000
Maine	\$8,816,080	\$13,891,500	\$7,555,000	\$6,750,730	\$724,000
Maryland	\$16,150,400	\$25,447,660	\$13,840,000	\$21,092,540	\$2,261,000
Massachusetts	\$20,457,500	\$32,233,670	\$17,531,000	\$29,609,720	\$3,175,000
Michigan	\$21,642,320	\$34,100,570	\$18,546,000	\$37,498,720	\$4,020,000
Minnesota	\$13,457,850	\$21,205,240	\$11,533,000	\$16,029,370	\$1,719,000
Mississippi	\$9,490,320	\$14,953,820	\$8,133,000	\$7,857,150	\$842,000

<sup>21</sup> States must provide 49% of the BIL DWSRF General capitalization grant amount as additional subsidization in the form of principal forgiveness or grants. This additional subsidization must be provided to eligible DWSRF assistance recipients that meet the state’s disadvantaged community criteria as described in SDWA §1452(d).

<sup>22</sup> States must provide 49% of the BIL DWSRF Lead Service Line Replacement capitalization grant amount as additional subsidization in the form of principal forgiveness or grants. This additional subsidization must be provided to eligible DWSRF assistance recipients that meet the state’s disadvantaged community criteria as described in SDWA §1452(d).

<sup>23</sup> States must provide 100% of the BIL DWSRF Emerging Contaminants capitalization grant amount, net of set-asides taken, as additional subsidization in the form of principal forgiveness or grants. Per SDWA §1452(a)(2)(G)(ii)(I), at least 25% of these funds must be provided to eligible DWSRF assistance recipients that meet the state’s disadvantaged community criteria as described in SDWA §1452(d) or to public water systems serving fewer than 25,000 persons.

<sup>24</sup> States must provide 49% of the CWSRF general 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.

<sup>25</sup> States must provide 100% of the emerging capitalization grant amount as additional subsidization in the form of principal forgiveness and/or grants. Additional subsidization may be provided to any eligible CWSRF assistance recipient for any project eligible under section 603(c) of the CWA that addresses emerging contaminants.

	<b>DWSRF General<sup>21</sup></b>	<b>DWSRF Lead Service Line Replacement<sup>22</sup></b>	<b>DWSRF Emerging Contaminants<sup>23</sup></b>	<b>CWSRF General<sup>24</sup></b>	<b>CWSRF Emerging Contaminants<sup>25</sup></b>
Missouri	\$15,542,800	\$24,490,200	\$13,319,000	\$24,176,110	\$2,592,000
Montana	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
Nebraska	\$8,816,080	\$13,891,500	\$7,555,000	\$4,460,470	\$478,000
Nevada	\$10,219,930	\$16,103,360	\$8,758,000	\$4,281,620	\$459,000
New Hampshire	\$8,816,080	\$13,891,500	\$7,555,000	\$8,715,140	\$935,000
New Jersey	\$15,046,920	\$23,708,650	\$12,894,000	\$35,637,700	\$3,821,000
New Mexico	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
New York	\$36,005,690	\$56,732,690	\$30,854,000	\$96,257,070	\$10,318,000
North Carolina	\$27,074,460	\$42,660,380	\$23,201,000	\$15,739,780	\$1,688,000
North Dakota	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
Ohio	\$22,172,990	\$34,937,000	\$19,001,000	\$49,095,550	\$5,264,000
Oklahoma	\$12,498,920	\$19,694,080	\$10,711,000	\$7,045,710	\$755,000
Oregon	\$11,599,770	\$18,277,000	\$9,940,000	\$9,851,940	\$1,056,000
Pennsylvania	\$27,147,470	\$42,775,040	\$23,264,000	\$34,545,000	\$3,704,000
Puerto Rico	\$8,816,080	\$13,891,500	\$7,555,000	\$11,374,860	\$1,220,000
Rhode Island	\$8,816,080	\$13,891,500	\$7,555,000	\$5,855,500	\$628,000
South Carolina	\$11,417,980	\$17,990,840	\$9,784,000	\$8,934,170	\$958,000
South Dakota	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
Tennessee	\$15,313,970	\$24,129,070	\$13,123,000	\$12,668,950	\$1,358,000
Texas	\$69,086,570	\$108,855,950	\$59,202,000	\$39,860,030	\$4,274,000
Utah	\$8,816,080	\$13,891,500	\$7,555,000	\$4,595,220	\$493,000
Vermont	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
Virginia	\$14,384,930	\$22,665,440	\$12,327,000	\$17,847,760	\$1,914,000
Washington	\$19,696,040	\$31,034,640	\$16,878,000	\$15,165,990	\$1,626,000
West Virginia	\$8,816,080	\$13,891,500	\$7,555,000	\$13,595,050	\$1,457,000
Wisconsin	\$15,026,340	\$23,676,310	\$12,877,000	\$23,576,840	\$2,527,000
Wyoming	\$8,816,080	\$13,891,500	\$7,555,000	\$4,281,620	\$459,000
<b>States Total</b>	<b>\$859,588,380</b>	<b>\$1,354,421,250</b>	<b>\$736,612,000</b>	<b>\$854,727,580</b>	<b>\$91,635,000</b>

## Attachment 1 – Appendix B: 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.<sup>26</sup> 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.<sup>27,28</sup>

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;<sup>29</sup>
  - Insect Repellents, Cosmetics and UV filters: DEET, Methylparabens, Benzophenone<sup>30</sup>
  - Fragrances: HHCB and AHTN (7-acetyl-1,1,3,4,4,6-hexamethyl-1,2,3,4-tetrahydronaphthalene; CAS 21145-77-7; Tonalide)<sup>31</sup>
  - Cosmetic and food preservatives: BHA (butylated hydroxyanisole) and BHT (butylated hydroxytoluene)<sup>32</sup>
  - 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 $\alpha$ ethynylestradiol, which also is a PCPP) and androgens (e.g., trenbolone, a veterinary drug), naturally occurring estrogens (e.g., 17 $\beta$ -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.

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<sup>26</sup> 2020 White House Office of Science & Technology Policy document which focused on drinking water/human health

<sup>27</sup> Contaminants of Emerging Concern under the Clean Water Act 2019, Congressional Research Services

<sup>28</sup> White Paper Aquatic Life Criteria for Contaminants of Emerging Concern 2008

<sup>29</sup> Peck, A.M. Analytical methods for the determination of persistent ingredients of personal care products in environmental matrices. *Anal Bioanal Chem* **386**, 907–939 (2006). <https://doi.org/10.1007/s00216-006-0728-3>

<sup>30</sup> Diana Montes-Grajales, Mary Fennix-Agudelo, Wendy Miranda-Castro,

Occurrence of personal care products as emerging chemicals of concern in water resources: A review, *Science of The Total Environment*, Volume 595, 2017, Pages 601-614, ISSN 0048-9697,

<https://doi.org/10.1016/j.scitotenv.2017.03.286>. (<https://www.sciencedirect.com/science/article/pii/S0048969717308161>)

<sup>31</sup> J Environ Eng (New York). Author manuscript; available in PMC 2010 Feb 1. Published in final edited form as: *J Environ Eng (New York)*. 2009 Nov 1; 135(11): 1192. doi: 10.1061/(ASCE)EE.1943-7870.0000085

<sup>32</sup> Soliman, Mary A., et al. “Human Pharmaceuticals, Antioxidants, and Plasticizers in Wastewater Treatment Plant and Water Reclamation Plant Effluents.” *Water Environment Research*, vol. 79, no. 2, 2007, pp. 156–167., <https://doi.org/10.2175/106143006x111961>.

- **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.<sup>33</sup> 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.<sup>34</sup>

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.

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<sup>33</sup> J.P.G.L. Frias, Roisin Nash, Microplastics: Finding a consensus on the definition, Marine Pollution Bulletin, Volume 138, 2019, Pages 145-147, ISSN 0025-326X, <https://doi.org/10.1016/j.marpolbul.2018.11.022>.  
(<https://www.sciencedirect.com/science/article/pii/S0025326X18307999>)

<sup>34</sup> Silvia Galafassi, Luca Nizzetto, Pietro Volta, Plastic sources: A survey across scientific and grey literature for their inventory and relative contribution to microplastics pollution in natural environments, with an emphasis on surface water

## **Attachment 1 – Appendix C: 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 1 – Appendix D: 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 1 – Appendix E: 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.

### **CWSRF Affordability Criteria**

Section 603(i)(2) of the CWA states:

*AFFORDABILITY CRITERIA.—*  
*(A) ESTABLISHMENT.—*



- (i) IN GENERAL.—Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.*
- (ii) CONTENTS.—The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161).*
- (B) EXISTING CRITERIA.—If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)—*
- (i) the State may use the criteria for the purposes of this subsection; and*
- (ii) those criteria shall be treated as affordability criteria established under this paragraph.*
- (C) INFORMATION TO ASSIST STATES.—The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).*

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; and
- 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%<sup>35</sup>

#### Unemployment Data:

- Communities with  $\geq 3.4\%$  Unemployed Population  $\geq 16$  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 0.80<sup>36</sup>
- 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

### **DWSRF Disadvantaged Communities**

Section 1452 (d) of the SDWA states:

*Assistance for disadvantaged communities*

(3) "Disadvantaged community" defined

*In this subsection, the term "disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.*

### **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%<sup>37</sup>
- Communities with  $\geq 3.4\%$  Unemployed Population  $\geq 16$  years in Civilian Labor Force
- Communities with  $\geq 12.1\%$  Vacant Households

<sup>35</sup> Using the Census Bureau's official poverty measure (OPM).

<sup>36</sup> Using the most recent SVI score calculated by the Centers for Disease Control and Prevention (CDC) using the American Community Survey (ACS). <https://svi.cdc.gov/map.html>

<sup>37</sup> Using the Census Bureau's official poverty measure (OPM).

- Community in a county with a Social Vulnerability Index score higher than 0.80<sup>38</sup>
- 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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<sup>38</sup> Using the most recent SVI score calculated by the Centers for Disease Control and Prevention (CDC) using the American Community Survey (ACS). <https://svi.cdc.gov/map.html>

## **Attachment 2: Implementation of CWSRF-Related Amendments in the Bipartisan Infrastructure Law**

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL) into law. Among its provisions are amendments to Title VI the Clean Water Act (CWA) that make changes to the base CWSRF program. This document summarizes the key changes and provides the relevant legislative text. These changes apply to all capitalization grants awarded after November 15, 2021.

### **Summary of Changes to Base CWSRF**

- **Reauthorization of CWSRF:** The BIL reauthorized the CWSRF from federal fiscal years 2022 through 2026. The funding levels will be set by through the annual appropriations process. Authorized levels are provided in the table below.

<b>FY22</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>
\$2.4B	\$2.75B	\$3.0B	\$3.25B	\$3.25B

- **Additional Authorization:** The BIL authorizes additional appropriations of \$1,639,000,000 for each fiscal year 2022 through 2026. The funding levels will be set by through the annual appropriations process.
- **Additional Subsidization:** The BIL amended requirements related to additional subsidization. States are required to use at least 10% (an increase from 0%), but no more than 30%, of the capitalization grant amount to provide additional subsidy to the following:
  - municipalities that meet the state’s affordability criteria;
  - municipalities that do not meet the state’s affordability criteria but seek additional subsidization to benefit individual ratepayers in the residential user rate class;
  - 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.

The BIL also expands the eligible uses of additional subsidy to include:

- grants;
  - buying, refinancing, or restructuring of debt; and
  - other loan forgiveness.
- **Technical Assistance Funding:** The BIL includes a provision that allows states to use up to an amount equal to 2% of their annual CWSRF capitalization grant for the purpose of hiring staff, nonprofit organizations, or regional, interstate, or municipal entities to assist rural, small, and tribal publicly owned treatment works.
  - **Analysis of Fund Distribution to Disadvantaged Communities:** The BIL included a provision that directs EPA to conduct an analysis of fund distributions to small and disadvantaged communities by November 15, 2023. EPA Headquarters and Regions will work collaboratively with states in this analysis.

- **Build America, Buy America:** The BIL established the Build America, Buy America (BABA) Act domestic sourcing requirements for federal financial assistance programs for infrastructure, including the SRF programs. EPA water infrastructure programs must comply with the BABA provision. EPA will be issuing BABA guidance for all water infrastructure programs upon publication of Office of Management and Budget agency-wide guidance.
- **Clean Watersheds Needs Survey:** The BIL expands the Clean Watersheds Needs Survey to include all capital projects eligible for CWSRF funding. It also authorizes \$5 million for implementing the Clean Watershed Needs Survey.

## Amended Legislative Text and Explanation

Text in *italics* is new and text in ~~strike through~~ was deleted.

### BIL §50210(a)(1)(A): Types of Assistance

Section 603(d)

As amended, CWA section 603(d) now states:

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law *and provided in subsection (k)*, a water pollution control revolving fund of a State under this section may be used only—

***Explanation:*** The CWA now incorporates an additional type of CWSRF assistance, as described in subsection (k). See below for additional information about this type of assistance.

### BIL §50210(a)(1)(B): Additional Subsidization

Section 603(i)

As amended, the CWA section 603(i) now states:

(i) ADDITIONAL SUBSIDIZATION.—

(1) IN GENERAL.—In any case in which a State provides assistance to an eligible recipient under subsection (d), the State may provide additional subsidization (*including forgiveness of principal, grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt*) ~~including forgiveness of principal and negative interest loans~~—

(A) to benefit a municipality that—

- (i) meets the affordability criteria of the State established under paragraph (2); or
- (ii) does not meet the affordability criteria of the State if the recipient—
  - (I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;
  - (II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and
  - (III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under

- this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or
- (B) to implement a process, material, technique, or technology—
- (i) to address water-efficiency goals;
  - (ii) to address energy-efficiency goals;
  - (iii) to mitigate stormwater runoff; or
  - (iv) to encourage sustainable project planning, design, and construction.
- (2) AFFORDABILITY CRITERIA.—
- (A) ESTABLISHMENT.—
- (i) IN GENERAL.—Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.
  - (ii) CONTENTS.—The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161).
- (B) EXISTING CRITERIA.—If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)—
- (i) the State may use the criteria for the purposes of this subsection; and
  - (ii) those criteria shall be treated as affordability criteria established under this paragraph.
- (C) INFORMATION TO ASSIST STATES.—The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).
- (3) LIMITATIONS.—
- (A) IN GENERAL.—A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this title for the fiscal year exceeds \$1,000,000,000.
- (B) TOTAL AMOUNT OF SUBSIDIZATION.—
- (i) *In general.--For each fiscal year, of the amount of the capitalization grant received by the State under this title, the total amount of additional subsidization made available by a State under paragraph (1)—*
    - (I) *may not exceed 30 percent; and*
    - (II) *to the extent that there are sufficient applications for assistance to communities described in that paragraph, may not be less than 10 percent.*
  - (ii) *Exclusion.--A loan from the water pollution control revolving fund of a State with an interest rate equal to or greater than 0 percent shall not be considered additional subsidization for purposes of this subparagraph.*
- ~~(B) ADDITIONAL LIMITATION.—~~
- ~~(i) GENERAL RULE.—Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization~~

~~grants under this title for a fiscal year for providing additional subsidization under this subsection.~~

~~(ii) EXCEPTION.—If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this title exceeds \$1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.~~

(C) APPLICABILITY.—The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this title for fiscal years beginning after September 30, 2014.

(D) CONSIDERATION.—If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 602(b)(5) into consideration.

***Explanation:*** Section 603(i) of the CWA now requires states to provide between 10% and 30% of their capitalization grant as additional subsidization whenever the annual appropriation is greater than \$1,000,000,000, “to the extent there are sufficient applications for assistance.” States unable to find sufficient eligible projects should explain in their Intended Use Plan (IUP) and Annual Report why the provision was not met and what they are doing to ensure that this provision is met in future years (e.g., marketing, outreach, technical assistance).

Additional subsidization may only be provided for the following:

- to benefit a municipality that meets the state’s affordability criteria as established under the CWA section 603(i)(2);
- 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; or
- 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.

If additional subsidization is being used to benefit individual ratepayers in the residential user rate class of a municipality that does not meet the affordability criteria, then the recipient must demonstrate to the CWSRF’s satisfaction that these ratepayers would otherwise experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is being sought. Additionally, the assistance agreement between the CWSRF and the recipient must include language indicating that the additional subsidization would be provided to these ratepayers through a user charge rate system or other appropriate method.

This section has also been amended by BIL to expand the eligible types of additional subsidy that states may offer to assistance recipients. Prior to the passage of BIL, CWA authorized additional subsidies explicitly in the form of a *loan* (e.g., loans which include principal forgiveness and/or a negative interest rate).

As amended by BIL, CWA section 603(i) now explicitly adds grants as an eligible form of additional subsidy.<sup>39</sup> States should be aware that “grant” recipients are legally considered “subrecipients” for the purposes of OMB’s grant regulations at 2 CFR Part 200 *et. seq.* In other words, assistance recipients

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<sup>39</sup> Though not explicitly mentioned, states could still provide additional subsidy as grants under CWA section 603(i)

receiving additional subsidy in the form of a grant are subject to additional cross-cutting federal requirements not applicable to those receiving other forms of additional subsidy. EPA's [subaward policy](#) establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 CFR 200.331, 200.332, and 200.333 ("the applicable regulations").

As amended by BIL section 603(i) also adds "buying, refinancing, or restructuring of debt" as options for offering additional subsidy to eligible assistance recipients. States may only purchase, refinance, or restructure debt that was associated with a CWSRF-eligible project. It is not necessary for the debt to have originated with the state's CWSRF program. However, the projects must still have been CWSRF-eligible and met all applicable CWSRF requirements. It is important to note that BIL codifies that an assistance agreement with a 0% or higher interest rate is not considered to be additional subsidy. In other words, the monetary savings to an assistance recipient for a loan with, for example, a 2% interest rate versus a 4% interest rate is not considered additional subsidization.

Finally, CWA section 603(i) allows states to provide additional subsidy in the form of other loan forgiveness. Any state intending to offer other loan forgiveness must provide sufficient documentation within the Intended Use Plan, showing that such assistance is consistent with the other eligible forms of additional subsidy by resulting in a permanent reduction in principal that must be repaid.

## **BIL §50210(a)(1)(C): Technical Assistance**

Section 603(k)

As amended, the CWA now includes section 603(k), which states:

*(k) Additional Use of Funds.--A State may use an additional 2 percent of the funds annually awarded to each State under this title for nonprofit organizations (as defined in section 104(w)) or State, regional, interstate, or municipal entities to provide technical assistance to rural, small, and tribal publicly owned treatment works (within the meaning of section 104(b)(8)(B)) in the State.*

**Explanation:** States may use up to an amount equal to 2% of their annual capitalization grant to provide assistance to nonprofit organizations<sup>40</sup> or State, regional, interstate, or municipal entities to provide technical assistance to rural, small, and tribal publicly owned treatment works. Examples of such assistance include, but are not limited to, retaining circuit riders to provide technical assistance; contracting with technical assistance providers; contracting with engineering firms directly to help develop projects; retaining certified public accountants or financial institutions to help recipients

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<sup>40</sup> Consistent with the definition of *Nonprofit organization* at 2 CFR § 200.1, the term nonprofit organization means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest and is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization. The term includes nonprofit colleges, universities, other educational institutions and tax-exempt nonprofit neighborhood and labor organizations. Nonprofit organizations that are not exempt from taxation under section 501 of the Internal Revenue Code must submit other forms of documentation of nonprofit status; such as certificates of incorporation as nonprofit under state or tribal law. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that lobby are not eligible for EPA funding as provided in the Lobbying Disclosure Act, 2 U.S.C. 1611.



complete the financial portions of SRF application packages; and retaining entities to complete Davis-Bacon related acts and/or AIS/BABAA compliance for recipients.

The maximum amount of CWSRF money that may be used to provide technical assistance consistent with section 603(k) of the CWA is an amount equal to 2% of all grant awards received by a state CWSRF after November 15, 2021. If a state does not utilize the full amount of the technical assistance funds allowed under a capitalization grant, they may reserve the right to utilize the unused portion at a later date.

States must include in the Intended Use Plan the amount of the technical assistance funds they plan to use as well as a description of the activities they plan to fund. In the Annual Report and the SRF Reporting System, states must provide a detailed accounting of the use of the funds.

## **BIL §50210(b): Capitalization Grant Reauthorization**

Section 607

As amended, CWA section 607 now states:

### **SEC. 607. AUTHORIZATION OF APPROPRIATIONS.—**

There is authorized to be appropriated to carry out the purposes of this title ~~the following sums:~~

- ~~(1) \$1,200,000,000 per fiscal year for each of fiscal year 1989 and 1990;~~
- ~~(2) \$2,400,000,000 for fiscal year 1991;~~
- ~~(3) \$1,800,000,000 for fiscal year 1992;~~
- ~~(4) \$1,200,000,000 for fiscal year 1993; and~~
- ~~(5) \$600,000,000 for fiscal year 1994.~~
- (1) \$2,400,000,000 for fiscal year 2022;
- (2) \$2,750,000,000 for fiscal year 2023;
- (3) \$3,000,000,000 for fiscal year 2024; and
- (4) \$3,250,000,000 for each of fiscal years 2025 and 2026.

**Explanation:** This section reauthorizes the CWSRF from federal fiscal years 2022 through 2026. The funding levels will be set through the annual appropriations process.

## **BIL §50220: Clean Watersheds Needs Survey**

As amended, the CWA now includes section 609, which states:

### **SEC. 609. CLEAN WATERSHEDS NEEDS SURVEY.**

*(a) Requirement.--Not later than 2 years after the date of enactment of this section, and not less frequently than once every 4 years thereafter, the Administrator shall---*

*(1) conduct and complete an assessment of capital improvement needs for all projects that are eligible under section 603(c) for assistance from State water pollution control revolving funds; and*

*(2) submit to Congress a report describing the results of the assessment completed under paragraph (1).*

*(b) Authorization of Appropriations.--There is authorized to be appropriated to carry out the initial needs survey under subsection (a) \$5,000,000, to remain available until expended.*

**Explanation:** This section expands the Clean Watersheds Needs Survey to include all capital projects eligible for CWSRF funding under CWA section 603(c). It also authorizes \$5 million for implementing the Clean Watershed Needs Survey.

## **Other BIL sections involving the CWSRF**

### **BIL §50216: Small and Disadvantaged Community Analysis**

This section is part of BIL and relates to the CWSRF but is not a new section of the CWA.

**(a) ANALYSIS.**—*Not later than 2 years after the date of enactment of this Act, using environmental justice data of the Environmental Protection Agency, including data from the environmental justice mapping and screening tool of the Environmental Protection Agency, the Administrator shall carry out an analysis under which the Administrator shall assess the programs under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) to identify historical distributions of funds to small and disadvantaged communities and new opportunities and methods to improve on the distribution of funds under those programs to low income communities, rural communities, minority communities, and communities of indigenous peoples, in accordance with Executive Order 12898 (42 U.S.C. 4321 note; 60 Fed. Reg. 6381; relating to Federal actions to address environmental justice in minority populations and low-income populations).*

**(b) REQUIREMENT.**—*The analysis under subsection (a) shall include an analysis, to the extent practicable, of communities in the United States that do not have access to drinking water or wastewater services.*

**(c) REPORT.**—*On completion of the analysis under subsection (a), the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives a report describing—*

- (1) the results of the analysis; and*
- (2) the criteria the Administrator used in carrying out the analysis.*

**Explanation:** This section directs EPA to conduct an analysis of fund distributions to small and disadvantaged communities by November 15, 2023.

### **BIL §70901: Build America, Buy America Act**

Title IX of BIL creates the Build America, Buy America (BABA) Act domestic sourcing requirements for Federal financial assistance programs for infrastructure, including the SRF programs. See Title IX language beginning on page 866 of [the BIL](#). For more specific information on BABA implementation, please refer to the upcoming Office of Management and Budget’s Build America, Buy America Act Implementation Guidance. EPA will issue a separate memorandum for BABA after OMB publishes its guidance.

### **EPA General Provisions Section 614: CWSRF Additional Authorization**

This section is part of the EPA General Provisions in BIL:

**SEC. 614. (b) Clean Water.**—*There is authorized to be appropriated to carry out the purposes of title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), in addition to amounts otherwise authorized to be appropriated for those purposes, an additional \$1,639,000,000 for each of fiscal years 2022 through 2026.*

**Explanation:** This section authorizes additional appropriations from federal fiscal years 2022 through 2026. The funding levels will be set by through the annual appropriations process.

## **Attachment 3: Implementation of DWSRF-Related Amendments in the Bipartisan Infrastructure Law**

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL) into law. Among its provisions are amendments to the Safe Drinking Water Act §1452 (42 U.S.C. 300j-12) that make changes to the base DWSRF program. This document summarizes the key changes and provides the relevant legislative text. These changes apply to all capitalization grants awarded after November 15, 2021.

### **Summary of Changes to Base DWSRF**

- **Reauthorization of DWSRF:** The BIL reauthorized the DWSRF from federal fiscal years 2022 through 2026. The funding levels will be set through the annual appropriations process. Authorized levels are provided in the table below.

FY22	FY23	FY24	FY25	FY26
\$2.4B	\$2.75B	\$3.0B	\$3.25B	\$3.25B

- **Additional Authorization:** The BIL authorizes additional appropriations of \$1,126,000,000 for each fiscal year 2022 through 2026 for the DWSRF. The funding levels will be set through the annual appropriations process.
- **Assistance for Disadvantaged Communities:** The BIL amended requirements related to additional subsidy assistance for disadvantaged communities. States are required to use at least 12% (an increase from 6%), but no more than 35%, of the capitalization grant amount for additional subsidy for state-defined Disadvantaged Communities. The BIL also expands the eligible uses of additional subsidy to include:
  - grants;
  - buying, refinancing, or restructuring debt; and
  - other loan forgiveness.
- **Technical Assistance Set-Aside:** The EPA Administrator is authorized to take a portion of DWSRF appropriations for the small system technical assistance national set-aside. The authorized set side is up to 2% and is taken prior to the calculation of the state allotments. This authorization lasts through federal fiscal year 2026. This authorization has existed since the 1996 SDWA Amendments.
- **Analysis of Fund Distribution to Disadvantaged Communities:** The BIL directs EPA to conduct an analysis of fund distributions to small and disadvantaged communities by November 15, 2023. EPA Headquarters and Regions will work collaboratively with states in this analysis.
- **Build America, Buy America:** The BIL established the Build America, Buy America (BABA) Act domestic sourcing requirements for federal financial assistance programs for infrastructure, including the SRF programs. EPA water infrastructure programs must comply with the BABA provision. EPA will be issuing BABA guidance for all water infrastructure programs upon publication of Office of Management and Budget agency-wide guidance.

- **American Iron and Steel (AIS):** AIS is now permanent for all DWSRF-funded projects.

## **Amended Legislative Text and Explanation**

Text in *italics* is new and text in ~~strike through~~ was deleted.

### **BIL §50102(a): American Iron and Steel Requirement**

As amended, the SDWA §1452(a)(4)(A) now states:

#### **(4) American iron and steel products**

##### **(A) In general**

~~During fiscal years 2019 through 2023, funds~~ *Funds* made available from a State loan fund established pursuant to this section may not be used for a project for the construction, alteration, or repair of a public water system unless all of the iron and steel products used in the project are produced in the United States.

**Explanation:** This section makes the American Iron and Steel (AIS) provision permanent for DWSRF-funded projects.

### **BIL §50102(a): Authorization of Appropriations**

As amended, the SDWA §1452(m) now states:

#### **(m) Authorization of appropriations**

**(1)** There are authorized to be appropriated to carry out the purposes of this section, except for subsections (a)(2)(G) and (t)-

(A) \$1,174,000,000 for fiscal year 2019;

(B) \$1,300,000,000 for fiscal year 2020; ~~and~~

(C) \$1,950,000,000 for fiscal year 2021-; *and*

(D) \$2,400,000,000 for fiscal year 2022;

(E) \$2,750,000,000 for fiscal year 2023;

(F) \$3,000,000,000 for fiscal year 2024; *and*

(G) \$3,250,000,000 for each of fiscal years 2025 and 2026.

**(2)** To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year. Such sums shall remain available until expended.

**Explanation:** This section reauthorizes the DWSRF from federal fiscal years 2022 through 2026. The funding levels will be set through the annual appropriations process.

### **BIL §50102(a): Authorization of Small System Technical Assistance Set-aside**

As amended, the SDWA §1452(q) now states:

#### **(q) Small system technical assistance**

The Administrator may reserve up to 2 percent of the total funds made available to carry out this section for each of fiscal years ~~2016 through 2021~~ *2022 through 2026* to carry out the provisions of section 300j-1(e) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through

appropriations (as authorized by section 300j–1(e) of this title) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j–1(e) of this title.

**Explanation:** This section reauthorizes the EPA Administrator to take up to 2% of the Congressional DWSRF appropriation, prior to the calculation of the state allotments, for the small system technical assistance national set-aside. This authorization lasts through federal fiscal year 2026. This authorization has existed since the 1996 SDWA Amendments.

## **BIL §50102(b): Assistance for Disadvantaged Communities**

As amended, the SDWA §1452(d) now states:

### **(d) Assistance for disadvantaged communities**

#### **(1) Loan subsidy**

~~Notwithstanding any (A) IN GENERAL.~~—*Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal), grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt).*

*(B) EXCLUSION.—A loan from a State loan fund with an interest rate equal to or greater than 0 percent shall not be considered additional subsidization for purposes of this subsection.*

#### **(2) Total amount of subsidies**

For each fiscal year, of the amount of the capitalization grant received by the State for the year, the total amount of loan subsidies made by a State pursuant to paragraph (1)-

(A) may not exceed 35 percent; and

~~(B) to the extent that there are sufficient applications for loans to communities described in paragraph (1), may not be less than 6 percent.~~

*(B) to the extent that there are sufficient applications for loans to communities described in paragraph (1), may not be less than 12 percent.*

#### **(3) "Disadvantaged community" defined**

In this subsection, the term "disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

**Explanation:** This section requires states to use at least 12%, but no more than 35%, of the capitalization grant amount for additional subsidy for state-defined Disadvantaged Communities. Before BIL, the floor was 6%. This requirement pertains to capitalization grants awarded by EPA to states after November 15, 2021. For most states, this is the Federal Fiscal Year 2022 capitalization grant. Note that the Disadvantaged Community Additional Subsidy authority is distinct from the additional subsidy authority Congress provided under recent appropriations acts.

States must continue to implement a Disadvantaged Community Program and solicit applications from water systems. EPA encourages states to maximize the use of this authority to help address affordability of drinking water in disadvantaged communities.

This section also expands the eligible types of Disadvantaged Community Additional Subsidy that states may offer to assistance recipients. Prior to the passage of BIL, SDWA authorized additional subsidies exclusively in the form of a *loan* (e.g., loans which include principal forgiveness and/or a negative interest rate).

States may now offer additional subsidization under this authority to assistance recipients in the form of grants. States should be aware that “grant” recipients are legally considered “subrecipients” for the purposes of OMB’s grant regulations at 2 CFR Part 200 *et. seq.* In other words, assistance recipients receiving additional subsidy in the form of a grant are subject to additional cross-cutting federal requirements not applicable to those receiving other forms of additional subsidy, including a *loan* with principal forgiveness or a negative interest rate. EPA’s [subaward policy](#) establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 CFR 200.331, 200.332, and 200.333 (“the applicable regulations”).

BIL also adds “other loan forgiveness” and “buying, refinancing, or restructuring of debt” as additional subsidization options for states to consider offering to assistance recipients. States may only purchase, refinance, or restructure debt and provide “other loan forgiveness” for projects that were DWSRF-eligible and met DWSRF requirements. It is not necessary for the debt to have originated with the state’s DWSRF program. Like all DWSRF projects, these assistance agreements must be scored and ranked amongst all other projects and have met all DWSRF requirements.

BIL codifies that a loan with a 0% or higher interest rate is not considered to be additional subsidy. In other words, the monetary savings to an assistance recipient for a loan with, for example, a 2% interest rate versus a 4% interest rate is not considered additional subsidization. This affirms what is written in the current DWSRF regulations.<sup>41</sup>

As a reminder, fees included as principal in a loan cannot be assessed on a disadvantaged community receiving additional subsidy under the Disadvantaged Community Additional Subsidy authority.<sup>42</sup>

EPA Regions must verify whether a state satisfies the mandate to use between 12% and 35% of the capitalization grant amount for the Disadvantaged Community Additional Subsidy at the time of grant application and during reviews.

## **Other BIL Sections Involving the DWSRF**

### **BIL §50216: Small and Disadvantaged Community Analysis**

This section is part of BIL and relates to the DWSRF but is not a new section of SDWA.

*(a) ANALYSIS.—Not later than 2 years after the date of enactment of this Act, using environmental justice data of the Environmental Protection Agency, including data from the environmental justice mapping and screening tool of the Environmental Protection Agency, the Administrator shall carry out an analysis under which the Administrator shall assess the programs under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and section 1452 of the Safe Drinking Water Act (42*

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<sup>41</sup> 40 CFR §35.3525(b)

<sup>42</sup> 40 CFR §35.3530(b)(3)

*U.S.C. 300j–12) to identify historical distributions of funds to small and disadvantaged communities and new opportunities and methods to improve on the distribution of funds under those programs to low income communities, rural communities, minority communities, and communities of indigenous peoples, in accordance with Executive Order 12898 (42 U.S.C. 4321 note; 60 Fed. Reg. 6381; relating to Federal actions to address environmental justice in minority populations and low-income populations).*

**(b) REQUIREMENT.**—*The analysis under subsection (a) shall include an analysis, to the extent practicable, of communities in the United States that do not have access to drinking water or wastewater services.*

**(c) REPORT.**—*On completion of the analysis under subsection (a), the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives a report describing—*

*(1) the results of the analysis; and*

*(2) the criteria the Administrator used in carrying out the analysis.*

**Explanation:** This section directs EPA to conduct an analysis of fund distributions to small and disadvantaged communities by November 15, 2023.

### **EPA General Provisions Section 614: DWSRF Additional Authorization**

This section is part of the EPA General Provisions in BIL:

**SEC. 614. (a) DRINKING WATER.**—*There is authorized to be appropriated to carry out the purposes of section 1452 of the Safe Drinking Water Act (42 U.S.C.300j–12), in addition to amounts otherwise authorized to be appropriated for those purposes, an additional \$1,126,000,000 for each of fiscal years 2022 through 2026.*

**Explanation:** This section authorizes additional appropriations from federal fiscal years 2022 through 2026. The funding levels will be set through the annual appropriations process.

### **BIL §70901: Build America, Buy America Act**

Title IX of BIL creates the Build America, Buy America (BABA) Act domestic sourcing requirements for Federal financial assistance programs for infrastructure, including the SRF programs. See Title IX language beginning on page 866 of [the BIL](#). For more specific information on BABA implementation, please refer to the upcoming Office of Management and Budget’s Build America, Buy America Act Implementation Guidance. EPA will issue a separate memorandum for BABA after OMB publishes its guidance.