



June 14, 2022

Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

Radhika Fox, Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20004

Re: Small and Disadvantaged Water System Funding and Assistance Recommendations

Dear Administrator Regan and Assistant Administrator Fox,

The Association of State Drinking Water Administrators (ASDWA) is the independent, nonpartisan, national organization representing the collective interests of the drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation. As co-regulators with EPA, ASDWA's members play a key role in Safe Drinking Water Act (SDWA) implementation through regulatory oversight and providing technical assistance and funding for the nation's public water systems (PWS) to ensure the public health protection and a healthy economy.

The Bipartisan Infrastructure Law (BIL) funding will significantly increase water infrastructure across the country, especially for small and/or disadvantaged water systems. ASDWA's members are looking forward to partnering with EPA as thousands of BIL construction projects get underway. Many small and disadvantaged water systems will be challenged to access the BIL funding.

Many small and disadvantaged water systems were created during a different era and lack staff, knowledge, skills, and resources to comply with modern day SDWA regulations which can result in violations, enforcement actions, and administrative orders against those systems. Many of the water systems in these communities do not have enough customers with the ability to provide a sustainable rate base to reliably fund the system's continued needs and fund new treatment requirements that did not exist when the system was originally formed, nor do they have full-time operators capable of operating those treatment systems. Many systems also rely on volunteer board members from the community that do not fully understand the responsibility and requirements, or have the dedicated time needed to sustainably run the water system and meet health-based standards. For these reasons, and others, we need to consider different approaches than we have used in the past.

ASDWA has developed the several recommendations (enclosed) for the BIL funding for small and disadvantaged water systems. These recommendations are summarized below:

- **Recognize and Build Upon States' Ongoing Successes:** Recognize and build upon the many successful drinking water and infrastructure funding program efforts to provide funding and assistance to their small and disadvantaged water systems.
- **Maximize State DWSRF Flexibility, Remove Restrictions, and Expand Eligibilities:** Undertake multiple actions to make the DWSRF more flexible, remove restrictions, and expand eligibilities for states to provide funding and assistance to their small and disadvantaged water systems. This includes removing requirements or providing waivers for Build America, Buy America

(BABA), American Iron and Steel (AIS), Davis-Bacon (DB), financial auditing, and other burdensome requirements for small systems using a population cutoff for projects to qualify for these waivers, such as serving less than 10,000 people, or a construction cost threshold.

- **Provide EPA Funding for Technical Assistance that is Directed by or Directly Coordinated with States:** Provide direct funding for additional technical assistance activities - that is separate from the DWSRF and set-asides - and that could be incorporated into the Agency's current development of the technical assistance Community Solutions Teams. This includes dedicated funding for hands-on, direct, no-cost funding and assistance for water system loan and grant project development and oversight, for qualifying for funding, and for all portions of the project from start to finish. Small and disadvantaged systems installing advanced treatment for removal of emerging contaminants such as per- and polyfluoroalkyl substances (PFAS) will need ongoing technical assistance for operating the advanced treatment (or finding and hiring the appropriately certified contract operator), including knowing when to replace the absorptive media and appropriate methods for media disposal.
- **Enhance Coordination between EPA Regions and States:** Work closely with state drinking water programs that are interested in receiving help, to consider options for adjusting their Intended Use Plans and Performance Partnership Agreements to address state-related issues such as with funding water systems that are not out of compliance, funding private water systems, and defining "health hazards."
- **Coordinate All Funding Sources:** Work directly with states as co-regulators, and coordinate with USDA, FEMA, and other Federal and state agency funding programs, state coordinated infrastructure funding committees and councils, private foundations, and technical assistance providers, to consider all possible sources of funding and assistance for these systems.

Thank you for considering the following detailed recommendations that we believe will help to further enhance the Agency's implementation efforts to aid small communities that need it the most and to enhance public health protection. If you have any questions about these recommendations, please contact me at aroberson@asdwa.org or Deirdre White at dwhite@asdwa.org. We look forward to discussing these recommendations with you in more detail.

Sincerely,



J. Alan Roberson, P.E.
Executive Director

Cc: John Lucey, EPA OA
Matthew Tejada, EPA OEJ
Bruno Pigott, EPA OW
Jennifer McLain, EPA OGWDW
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Association of State Drinking Water Administrators (ASDWA)

Small and Disadvantaged Water System Funding and Assistance Recommendations for EPA

The Association of State Drinking Water Administrators (ASDWA) appreciates the Agency's consideration of these recommendations. ASDWA is the national organization representing the collective interests of the drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation. ASDWA's members implement the Safe Drinking Water Act (SDWA) by regulating and providing technical assistance and funding for the nation's public water systems (PWS) to ensure the protection of public health and a healthy economy.

Build Upon and Recognize States' Successes: ASDWA recommends that EPA must recognize and build upon the many successful drinking water and infrastructure funding program efforts that states have achieved to date, in providing funding and assistance to their small and disadvantaged water systems. Note that in some states, much of this work has been done outside of the DWSRF out of necessity. State drinking water programs are currently working diligently across programs with their Infrastructure Financing Agencies (where applicable), and with EPA Regions and other federal, state, and local partners to be creative and help address these challenges. The issues facing small and disadvantaged systems require coordinated approaches to ensure consideration of all opportunities for providing funding and assistance from many different sources and present an opportunity for the DWSRF to advance in ways it has not been able to in the past. These state practices include the following:

- State efforts include processes to ensure that funding decisions take long-term and sustainable alternatives into account for small and disadvantaged water systems, including the need for consolidation (or regionalization and partnerships). Conducting financial reviews, assessing technical, managerial, and financial (TMF) capacity, assessing alternatives, and considering consolidation are all part of the process that states use to rank water systems for DWSRF loan applications and other state funding programs, as well as further determine how to help these systems.
- EPA funding requirements and restrictions are sometimes insurmountable for the smallest systems to be able to access and use the funding. To compensate, coordinated funding efforts often go beyond the DWSRF and other EPA funding sources to include funding from many other Federal, state, local, and private funding sources.
- State training and assistance efforts can include TMF capacity development assistance, engineering plan development, hands-on consultations, funding application assistance, and more. States provide this assistance in coordination with technical assistance providers and other partners.
- These efforts acknowledge that it is not practical to provide funding for water systems that are unable to sustainably fund, operate, and maintain their system in order to reach and maintain SDWA compliance. Additionally, states recognize that providing funding to water systems who are consistently and repeatedly offered assistance but refuse to accept the assistance or funding is not an effective use of these limited resources.

Maximize State DWSRF Flexibility Remove Restrictions and Expand Eligibilities: ASDWA recommends that EPA undertake the following actions to make the DWSRF more flexible, remove restrictions, and expand eligibilities for states to provide funding and assistance to their small and disadvantaged water systems, or alternatively in some recommendations, provide EPA funding for water system loans or grants in direct coordination with states.

- **Change DWSRF requirements and provide waivers for the smallest water systems:** Consider removing requirements or providing waivers for Build America, Buy America (BABA), American Iron and Steel (AIS), Davis-Bacon (DB), financial auditing, and other burdensome requirements for small systems using a population cutoff for projects to qualify for these waivers, such as serving less than 10,000 people, or a construction cost threshold.
- **Remove or allow flexibility for DWSRF loan match requirements:** Remove the loan match requirement for small and disadvantaged water systems altogether or allow volunteer labor to be used as an in-kind or non-federal DWSRF loan match for water systems that do not qualify for a loan.
- **Develop guidelines about requirements for refinancing USDA loans with DWSRF funds:** Allow a project that was completed prior to implementation of a DWSRF federal cross-cutting requirement to be exempted from these requirements for refinancing.
- **Provide EPA funding for water systems, or allow a portion of repaid DWSRF principal and interest to be converted to 100% grants to serve as seed money to:**
 - Hire consultants to plan, develop and temporarily operate regional hubs that offer shared managerial and operational services such as billing, certified operators, bookkeeping, funding requests and office management services.
 - Procure planning and design services for systems that specifically meet DWSRF funding requirements and are necessary to return the system to compliance. This will allow greater participation and eligibility for infrastructure funding and provide a path on the steps needed to return to compliance.
 - Pay for bond counsel costs to obtain a DWSRF loan.
 - Allow for cost of services to be based on a sliding scale until the water system is economically stable to increase incrementally to an affordable rate.
- **Expand the use of DWSRF Capitalization Grants to provide 100% grants for simple projects and associated costs:** Allow states to use DWSRF Capitalization Grants (not needed for loans) to provide 100% grants for small and disadvantaged systems for simple return to compliance projects, recognizing the statutory language in SDWA Section 1452(b)(3) prohibiting DWSRF funding for “monitoring, operation, and maintenance expenses”. Maximum flexibility should be used to allow for grants for projects such as storage tank rehabilitation or fixing significant deficiencies identified in Sanitary Surveys. Such grants should include costs associated with administration, project management, and grant closeouts (such as an audit).
- **Provide flexibility to expand the use of DWSRF funds and WIIN Grants for systems that are not (or not yet) out of compliance:** Rather than requiring states to prioritize funding for water systems with existing health-based violations or to address emerging contaminants, allow states to submit justifications for public water systems that demonstrate a history of or are anticipated to exceed a health-based standard. Additionally, allow for justifications (i.e., asset conditioning) to use funds to maintain their existing infrastructure to prevent future violations.
- **Provide EPA funding for third party loans and grants to water systems, or allow DWSRF set-asides to be used for small amounts of funding:** Provide partial loans and grants administered by a third party, or allow state DWSRF set-asides to be used for providing small amounts of funding to address water system repairs, replace distribution lines, install meters, provide engineering, project management, well rehabilitation, and for drilling test wells that may or may not become part of a final infrastructure project.
- **Consider different approaches for helping the smallest water systems:** Consider a different management and oversight structure (or approach) for systems that serve under 100 people (or

another threshold representing the smallest systems). For example, require the development and update of asset management and financial management plans, and a stable rate structure as a condition of funding and/or assistance, as well as the ability to include the cost of these plans in part of a larger funding project.

- **Consolidation:**
 - Provide EPA funding for or allow 100% grant funding for consolidation projects that eliminate a less capable water system by consolidating with a more capable water system.
 - Provide EPA funding for incentive money to be used for larger entities to take over or serve struggling small system neighbors such as funding to upgrade the smaller system's distribution system and meters to make consolidation more attractive for larger systems.
- **Private Water Systems:**
 - Provide guidance and help states that may want to remove restrictions for funding private water systems (e.g., mobile home parks, schools, daycares, and may want to provide funding to for-profit non-community water systems, transients, and other than municipal (OTM) water systems), especially for noncompliance, including funding improvements on private property.
 - Consider the development of a stand-alone funding program for private water systems.
 - Consider options for requiring modern infrastructure in mobile home parks, which will likely result in closures.

Provide EPA Funding for Technical Assistance that is Directed by or Directly Coordinated with States:

ASDWA recommends that EPA provide direct funding for additional technical assistance activities - that is separate from the DWSRF and set-asides - and that could be incorporated into the Agency's current development of the Community Solutions Teams. This additional funding and assistance provided by EPA would help offset the lack of state resources, as well as state reductions in DWSRF loan funding availability caused by providing large percentages of the funds for grants and principal forgiveness. Any actions taken by the Agency in response to these recommendations or in its current efforts must be directed by, or conducted in direct coordination with, the state drinking water programs to ensure that the water system funding and assistance being provided is consistent with current state priorities and considers all possible opportunities and partners to find solutions that are sometimes beyond the EPA funding and assistance programs. Recommended actions include the following:

- Provide dedicated funding to states for grants to small and disadvantaged systems.
- Earmark specific funds for water systems below a certain threshold, so they are not competing with larger water systems that need substantial amounts of funding for their projects.
- Provide funding for additional technical assistance for activities such as, but not limited to:
 - Conducting public education and stakeholder engagement activities;
 - Educating water system decision makers, including training for Board members;
 - Improving the funding eligibility and ranking status for environmental justice communities and small and disadvantaged water systems based on state criteria; and
 - Encouraging long-range planning and asset management that would provide decision makers and others with essential information to address needed improvements or acknowledge the need for much more urgent action in the future.

- Provide dedicated funding for hands-on, direct, no-cost funding and assistance for loan and grant project development and oversight, for qualifying for funding, and for all portions of the project and funding process from start to finish including:
 - *Before funding:* To conduct feasibility studies, customer relations and outreach, workforce development, and water system management training.
 - *Getting ready for funding:* To perform financial audits, accounting, and rate setting; asset management; conduct surveys; obtain operator services and permits, and professional services necessary to qualify (and be competitive) for funding. Additional challenges for these PWSs may include obtaining audited financial statements, dealing with unpaid historical taxes, and business entities that do not have the proper paperwork (e.g., nonprofits that never filed for a 501c3, etc.).
 - *Professional services:* To conduct environmental reviews, develop engineering plans and Capital Improvement Plans.
 - *Assistance with loan and grant applications and process:* To complete the loan and grant application process and associated paperwork and pay for legal counsel at loan closing.
 - *Project accounting, management, and reporting:* To manage budgets and project completion timelines and comply with project and funding reporting and requirements.
 - *Project Delivery:* To manage loan dollars and ensure compliance after project execution.
- Beyond construction completion, small and disadvantaged systems installing advanced treatment for removal of emerging contaminants such as per- and polyfluoroalkyl substances (PFAS) will need ongoing technical assistance for operating the advanced treatment, including knowing when to replace the absorptive media and appropriate methods for media disposal. Additionally, these systems will need financial and managerial assistance to design rate structures to fund for media replacement and disposal in perpetuity. Once a treatment system is installed, it must be properly operated by a certified operator and properly maintained to protect public health.

EPA Regional Coordination with States: ASDWA recommends that the EPA Regions work closely with state drinking water programs that are interested in receiving help, to consider options for adjusting their Intended Use Plans and Performance Partnership Agreements to address state-related issues such as with funding water systems that are not out of compliance, funding private water systems beyond EPA’s restriction that does not allow funding for for-profit noncommunity water systems, and defining “health hazards.” This includes considering changes to streamline and review the necessary steps in the DWSRF loan process where each state has their own unique criteria for DWSRF loans and priority points that could potentially be adapted or changed to address their small and disadvantaged water system funding and assistance needs.

In conclusion, ASDWA emphasizes that the Agency must provide adequate and appropriate funding and programs to specifically help small and disadvantaged water systems. In addition, EPA must work directly with states as co-regulators, and coordinate with USDA, FEMA, and other federal and state agency funding programs, state coordinated infrastructure funding committees and councils, private foundations, and technical assistance providers, to consider all possible sources of funding and assistance for these systems.