



FEMA

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA)
AND
THE DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

*Regarding Coordination between EPA and FEMA
Pertaining to State Revolving Fund Programs*

I. PARTIES

The Parties to this agreement are the U.S. Environmental Protection Agency (EPA) and the Federal Emergency Management Agency (FEMA).

II. AUTHORITY

This Agreement is authorized under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended (Stafford Act): 42 U.S.C. § 5121 et seq; Title IV of the Clean Water Act (33 U.S. Code § 1383), as amended; Title 42 of the Safe Drinking Water Act (42 U.S.C. § 300j-12).

III. PURPOSE AND SCOPE

This Memorandum of Understanding (MOU) establishes a framework for the EPA funded State Revolving Fund (SRF) programs to assist and collaborate with FEMA disaster assistance grant programs. Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs operate in all fifty states and Puerto Rico. SRF programs provide low-interest loans and additional subsidies to public, private, and non-profit entities for eligible drinking water and wastewater treatment facilities and a wide variety of other water and wastewater infrastructure projects. SRFs have worked cooperatively with FEMA and state, local, tribal, and territorial governments to allow local entities to quickly recover and restore their vital infrastructure after a Presidentially-declared major disaster. The proposed activities in this MOU are intended to streamline coordination between FEMA and the SRFs to enable funding to support essential infrastructure projects to be made available as quickly as possible.

In cases where applicants for FEMA grant assistance need funding to meet cost sharing requirements or provide interim financing for FEMA-funded projects, the SRFs can act as cooperative and nimble financing sources with the benefit of pre-established relationships with the many municipalities applying for FEMA disaster assistance grant

funding. In disaster situations where communities have their cash reserves stretched in many directions, the SRFs can provide initial up-front funding for applicants to pay on an incurred cost basis, rather than on a reimbursement basis (meaning that a community does not have to initially expend its own funds to pay invoices) to enable recovery and repair efforts to proceed in advance of FEMA reimbursement.

IV. RESPONSIBILITIES

Both EPA and FEMA, as resources and information are available, and as appropriate, intend to work with each other as follows:

- A. **EPA intends to encourage SRF programs to provide non-Federal funds for the purposes of the non-Federal cost share on FEMA-funded projects or Interim Loans.** FEMA administers cost-sharing requirements in accordance with the Robert T. Stafford Emergency Assistance and Disaster Relief Act, FEMA regulations in Title 44 of the Code of Federal Regulations (CFR) and 2 C.F.R. § 200.306, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at Title 2 Part 200. Specifically, 2 C.F.R. § 200.306(b)(5) prohibits a non-Federal entity from paying its cost share under a Federal grant with funds from another Federal grant unless authorized by a Federal statute.

FEMA considers that funds which have lost their "Federal identity" do not violate these restrictions. Accordingly, SRF funds identifiable as non-Federal may be used as a cost share. The EPA awards capitalization grants to state SRF programs. SRF programs, in turn, provide loans to eligible recipients, such as municipalities and water treatment districts, which use the loans to build water infrastructure. When the loan recipients pay the loans back to the SRF, the funds are no longer considered Federal grant funds. As non-Federal funds, such repayments, however, can only be used for activities identified as eligible by EPA statutes (Clean Water Act and Water Resources Reform and Development Act and Safe Drinking Water Act).

In addition to repayments, the revenue sources for SRF programs include Federal capitalization grants, state matching funds, interest payments on outstanding loans, interest earnings from invested funds, fee revenue, and leveraged bond proceeds. Aside from the money provided by Federal capitalization grants and a state's required match for the capitalization grant, all other assets in a state SRF fund are "Non-Federal."

Accordingly, SRF programs precisely track and account for all revenue streams and will ensure that only Non-Federal dollars are used for cost sharing or for interim loans that are ultimately repaid using funds granted to applicants for eligible work by FEMA.

- B. EPA confirms that the SRF State Environmental Review process is a NEPA-like process.** The National Environmental Policy Act (NEPA) is procedural law applying to major Federal actions; because SRFs are state-operated programs administering both Federal and non-Federal funds, the environmental review process used by SRFs cannot be called “NEPA.” However, CWSRF Federal regulations at 40 CFR Part 35 § 35.3140 require all traditional infrastructure projects to undergo environmental reviews that are NEPA-like. Similarly, DWSRF Federal regulations at 40 CFR Part 35 § 35.3580 require all projects up to the amount equal to the capitalization grant to undergo a NEPA-like review.

EPA reviewed and approved each SRF State Environmental Review Process (SERP) at the inception of the SRF programs to ensure that the process was functionally equivalent to NEPA. EPA and other Federal agencies have recognized that State Environmental Review processes carry rigor and processes which incorporate the major components of NEPA.

FEMA will review environmental documents prepared by SRF agencies to support NEPA and other compliance requirements in cases where an SRF is providing interim funding, matching funds, or supplemental funding to a FEMA recipient. FEMA may consider environmental review documents prepared by SRF agencies as part of FEMA’s required environmental compliance reviews. Each agency must still comply with its own requirements, and with applicable laws, regulations, and Executive Orders. This arrangement is intended to expedite the planning process to provide much-needed disaster relief and will also conserve local, state, and Federal resources during the times that these resources are desperately needed.

- C. EPA intends to evaluate the potential to waive the American Iron and Steel (AIS) requirements for FEMA-eligible projects.** The Clean Water Act and the Safe Drinking Water Act require SRF assistance recipients to use iron and steel products produced in the United States for Drinking Water and Clean Water SRF projects, regardless of the level of funding or size of the project. The AIS requirements apply to EPA water infrastructure projects, yet FEMA funding programs do not have the same AIS requirements. Therefore, applying AIS to FEMA projects may potentially affect the interim financing sought herein. The statutes that require the use of AIS also allow the AIS requirements to be waived by the EPA Administrator under certain statutory conditions, including cases of public interest, product availability, and project cost. Accordingly, EPA will consider cases of emergency or disaster recovery as the bases of AIS waivers.¹

¹ Waivers issued for emergency drought-related projects in California (2015) and State emergency loan program projects in Washington (2015). Waivers not approved for State emergency loan program in Oregon (2018) and Emergency Relief and Urgent Need Programs in Texas (2018). Source: EPA, Clean Water Act (2014) as amended.

- D. FEMA and EPA intend to develop an official policy and process for information sharing so the SRFs can have access to information early enough to be helpful.** Having early access to a list of damaged facilities will allow SRF programs to initiate early contact with those communities and offer timely assistance to supplement or bridge forthcoming FEMA funding. Following an emergency or major disaster, FEMA liaisons (discussed in part F, below) will share basic information as practicable, on impacted water and wastewater facilities (e.g., damage assessments, points of contact, status updates) with the SRF agencies listed in Appendix A and B. EPA will encourage SRF managers to contact the FEMA liaison using the process created as a result of this MOU, and EPA intends to brief FEMA on the resources and capabilities the SRF program can offer to FEMA and impacted communities.

In addition, FEMA will provide EPA with information from its electronic grants systems regarding the project being funded with SRF funds.

- E. SRFs can provide documentation to FEMA for facility, engineering, and environmental review.** In cases where SRFs provide joint funding and/or interim funding to a FEMA recipient, SRF staff (at the manager's discretion) may assist in providing facility, engineering, and environmental review documentation to the applicant to provide to FEMA, to expedite the provision of necessary information from the applicant to FEMA, in order for FEMA to conduct the necessary grant review process.
- F. The contact information of the official FEMA liaison for a disaster (or a process for obtaining this information) will be provided to the appropriate EPA Headquarters staff who work on the following programs: State Revolving Fund Program, Clean Water State Revolving Fund, and/or Drinking Water State Revolving Fund Program.** The FEMA liaison may be the Federal Coordinating Officer (FCO), Federal Disaster Recovery Coordinator (FDRC) or Federal Disaster Recovery Officer (FDRO). This FEMA liaison will be authorized to coordinate recommendations for decisions of the Joint Field Office (JFO) and of regional and headquarters leadership pertaining to inter-agency funding coordination. Providing this information to the appropriate EPA Headquarters State Revolving Fund Program will allow it to be disseminated to the appropriate CWSRF and DWSRF state managers. EPA is a primary agency in the Recovery Support Function Leadership Group (RSFLG), an interagency structure that helps coordinate recovery efforts. As a "primary" agency for both the Natural and Cultural Resources Recovery Support Function (RSF) and the Health and Social Services RSF, EPA can work with FEMA at both the Headquarters level and through field coordinators to ensure this MOU is shared and implemented as appropriate.
- G. After a Presidentially-declared major disaster, EPA will encourage SRF staff to provide a copy of this MOU to state office of emergency management and FEMA Regional and field personnel.** EPA will further

encourage SRF staff to contact the appropriate FEMA liaison to initiate coordination in the event of the declaration of an emergency or major disaster declaration, at the SRF manager's discretion and dependent on availability of SRF funds. For the purposes of FEMA coordination, the SRF agency listed in Appendix A or B will take the lead in coordinating with the FEMA liaison. When two separate SRF state agencies are involved from the same state, the two agencies will determine a single SRF state agency to communicate on issues pertaining to FEMA coordination.

- H. **For any project that receives both FEMA and SRF funding, EPA will encourage SRFs to work with FEMA to prevent duplication of benefits and fraud, waste, and abuse.** FEMA and the SRF will share appropriate information and documentation relating to the work done with FEMA funds and the work done with SRF funds in a manner sufficient to prevent the duplication of benefits, or fraud, waste, and abuse.

V. REPORTING AND DOCUMENTATION

If this MOU is invoked in the implementation of any disaster-related projects, then documentation at the project level will include reference to this MOU.

VI. POINTS OF CONTACT

EPA and DHS/FEMA designate the following key offices and personnel within their respective organizations to lead MOU implementation; ensure effective coordination across components of each agency which have equities in the MOU; and support partnership activities in a manner serving mutual interests and benefits.

A. Environmental Protection Agency (EPA)

Andrew Sawyers
Director, Office of Wastewater Management
1200 Pennsylvania Avenue NW
Washington, DC 20460 Phone: 202-564-0748
Email: sawyers.andrew@epa.gov

B. Federal Emergency Management Agency (FEMA)

Gerilee Bennett
Director, Interagency Coordination Division (ICD)
Recovery Directorate
500 C Street SW
Washington, DC 20472 Phone: 202-646-4173
Email: Gerilee.Bennett@fema.dhs.gov

VII. OTHER PROVISIONS

- A. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of FEMA or EPA. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.
- B. Nothing in this Agreement is intended to restrict the authority of either party to act as provided by statute or regulation.
- C. This Agreement, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this Agreement.
- D. Any information shared under this Agreement will comply with the Privacy Act, and to the extent required and allowable, the Freedom of Information Act (FOIA), and any other applicable statute, Executive Order, or regulation.
- E. The use of Federal facilities, supplies and services undertaken under this Agreement will be in compliance with regulations promulgated by FEMA under the Stafford Act guaranteeing non-discrimination and prohibiting duplication of benefits. (See Stafford Act Section 312 and 44 CFR § 206.11.)
- F. This Agreement is between FEMA and EPA and does not confer or create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any third person or party (public or private) against the United States, its agencies its officers, or any person; or against EPA, their officers or employees or any other person.
- G. This Agreement creates neither a partnership nor a joint venture, and neither party has the authority to bind the other. This agreement is not intended to be enforceable in any court of law or dispute resolution forum.
- H. The parties will use or display each other's name, emblem, or trademarks only in the case of projects and only with the prior written consent of the other party. The Department of Homeland Security (DHS) seal is protected by 18 U.S.C. §§ 506, 701, and 1017, among other laws, and use of the seal is controlled by the DHS Office of Public Affairs through DHS Management Directive No. 0030 (MD 0030). Written permission is required to use the DHS Seal. Any party to this agreement that is not a Federal entity may only use an official DHS seal or logo upon written permission from DHS.
- I. The parties to this agree to be responsible for the negligent or wrongful acts or omissions of their respective employees arising under this agreement. The parties agree --subject to any limitations imposed by law, rule, or regulation -- to cooperate in good faith to resolve any claims promptly and, whenever appropriate, without litigation. For all claims or suits arising under this agreement,

each party's designated legal representatives will, within (7) calendar days of receipt, provide each other's designated legal representatives copies of any documents memorializing such claims. Nothing in this Agreement shall be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b), 2671-2680 provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by federal employees within the scope of their employment.

- J. This Agreement is not a fiscal or funds obligation document. Any services, equipment or personnel provided to FEMA to accomplish the goals anticipated under this agreement are done so without expectation of reimbursement or the payment of fees related to the provision of such services, equipment or personnel unless otherwise agreed. Any specific work or activity that involves the transfer of funds, services, or property among the parties will require execution of a separate agreement and will be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory or other authority. This Agreement does not provide such authority.
- K. Any ancillary reimbursement agreements must be in writing and signed by both parties.
- L. This Agreement, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this Agreement.
- M. This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party.
- N. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against FEMA or EPA, their officers or employees, or any other person. This MOU does not apply to any person outside of FEMA and EPA.
- O. All commitments made by EPA and FEMA in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

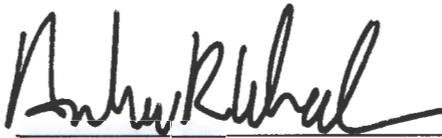
VIII. PERIOD OF PERFORMANCE

This MOU is to take effect upon signature of both Parties, and will expire, unless otherwise extended, 5 years from the date of signature. This MOU may be extended or modified at any time through the mutual written consent of the Parties.

IX. TERMINATION

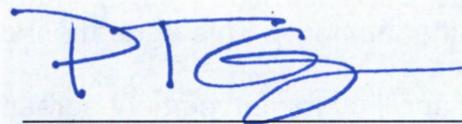
A party may terminate its participation in this MOU at any time by providing written notice to the other party, at least 30 days in advance of the desired termination date.

APPROVED BY:

 MAY 31 2019

Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency (EPA)

Date

 5/13/19

Pete Gaynor
Acting Administrator
Federal Emergency Management
Agency (FEMA)

Date

Appendix A: Lead Clean Water State Revolving Fund (CWSRF) State Agencies

Alabama Department of Environmental Management (ADEM)
Alaska Department of Environmental Conservation, Division of Water
Arizona Water Infrastructure Finance Authority of Arizona
Arkansas Natural Resources Commission
California State Water Resources Control Board
Colorado Water Resources and Power Development Authority
Connecticut Department of Energy and Environmental Protection
Delaware Department of Natural Resources and Environmental Control
Florida Department of Environmental Protection
Georgia Environmental Finance Authority
Hawaii Department of Health
Idaho Department of Environmental Quality
Illinois Environmental Protection Agency
Indiana Finance Authority
Iowa Department of Natural Resources
Kansas Department of Health and Environment
Kentucky Infrastructure Authority
Louisiana Department of Environmental Quality
Maine Municipal Bond Bank
Maryland Water Quality Financing Administration
Massachusetts Clean Water Trust
Michigan Department of Environmental Quality
Minnesota Public Facilities Authority
Mississippi Department of Environmental Quality
Missouri Department of Natural Resources
Montana Department of Environmental Quality
Nebraska Department of Environmental Quality
Nevada Division of Environmental Protection
New Hampshire Department of Environmental Services
New Jersey Environmental Infrastructure Trust
New Mexico Environment Department
New York Environmental Facilities Corporation
North Carolina Department of Environment and Natural Resources
North Dakota Department of Health
Ohio Environmental Protection Agency
Oklahoma Water Resources Board
Oregon Department of Environmental Quality
Pennsylvania Infrastructure Investment Authority
Puerto Rico Environmental Quality Board (PREQB)
Rhode Island Rhode Island Infrastructure Bank
South Carolina Department of Health & Environmental Control
South Dakota Department of Environment and Natural Resources
Tennessee Department of Environment and Conservation
Texas Water Development Board

Utah Department of Environmental Quality
Vermont Department of Environmental Conservation
Virginia Department of Environmental Quality
Washington Department of Ecology
West Virginia Department of Environmental Protection
Wisconsin DNR, Bureau of Community Financial Assistance
Wyoming Office of State Lands and Investments

Appendix B: Lead Drinking Water State Revolving Fund (DWSRF) State Agencies

Alabama Department of Environmental Management
Alaska Department of Environmental Conservation
Arizona Water Infrastructure Finance Authority
Arkansas Department of Health
California State Water Resources Control Board
Colorado Water Resources and Power Development Authority
Connecticut Department Public Health
Delaware Department of Health and Social Services
Florida Department of Environmental Protection
Georgia Environmental Finance Authority
Hawaii Department of Health
Idaho Department of Environmental Quality
Illinois Environmental Protection Agency
Indiana Finance Authority
Iowa Department of Natural Resources
Kansas Department of Health and Environment
Kentucky Infrastructure Authority
Louisiana Department of Health
Maine Municipal Bond Bank
Maryland Water Quality Financing Administration
Massachusetts Department of Environmental Protection
Michigan Department of Environmental Quality
Minnesota Public Facilities Authority
Mississippi State Department of Health
Missouri Department of Natural Resources
Montana Department of Environmental Quality
Nebraska Department of Environmental Quality
Nevada Division of Environmental Protection
New Hampshire Department of Environmental Services
New Jersey Environmental Infrastructure Trust
New Mexico Environment Department
New York Environmental Facilities Corporation
North Carolina Department of Environmental Quality
North Dakota Department of Health
Ohio Environmental Protection Agency
Oklahoma Water Resources Board
Oregon Health Authority
Pennsylvania Infrastructure Investment Authority
Puerto Rico Department of Health
Rhode Island Department of Health
South Carolina Department of Health & Environmental Control
South Dakota Department of Environment and Natural Resources
Tennessee Department of Environment and Conservation
Texas Water Development Board

Utah Department of Environmental Quality
Vermont Department of Environmental Conservation
Virginia Department of Health
Washington State Department of Health
West Virginia Department of Health and Human Resources
Wisconsin Department of Natural Resources
Wyoming Office of State Lands and Investments