



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

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OFFICE OF WATER

MEMORANDUM

SUBJECT: Award and Implementation of Supplemental DWSRF Capitalization Grants Under the 2017 Continuing Resolution and the 2017 WIIN Act

FROM: Peter C. Grevatt, Director
Office of Ground Water and Drinking Water

A handwritten signature in black ink, appearing to read "Peter Grevatt", written over the printed name and title.

TO: Chris Korleski, Director
Water Division, Region V

I. Purpose and Background

In December 2016, Congress passed and President Obama signed legislation¹ authorizing and appropriating \$100 million in disaster-related supplemental Drinking Water State Revolving Fund (DWSRF) capitalization grants under section 1452 of the Safe Drinking Water Act (SDWA), as amended. Currently, Flint, Michigan is the nation's only eligible community for these funds.

This memorandum describes how the supplemental funding legislation should be implemented in the context of the ongoing DWSRF program. Nothing in this document is meant to conflict with or supersede the appropriating Continuing Resolution (CR), authorizing Water Infrastructure Improvements for the Nation (WIIN) Act, Office of Management and Budget Guidance, or any capitalization grant term and condition.

General DWSRF program information is located at www.epa.gov/drinkingwatersrf.

II. Application Requirements

The EPA recommends that the State of Michigan submit a capitalization grant application as soon as possible. Because of the nature of the supplemental funds and WIIN requirements, applications should be submitted separately from other DWSRF capitalization grant applications. The supplemental DWSRF grant application should be submitted to EPA's Region 5 office through www.grants.gov.

To accelerate grant awards, Michigan may apply to the EPA for conditional grants based on a draft Intended Use Plan (IUP). With conditional awards, if the state and Region have completed negotiations for part of the work plan, the Region may conditionally approve the work plan and obligate the full amount of the award placing appropriate drawdown/payment restrictions for the portion of the work plan

¹ The Water Infrastructure Improvements for the Nation (WIIN) Act (Pub. L. 114-322) authorized and the 2017 Further Continuing and Security Assistance Appropriations Act (Continuing Resolution, or CR) (Pub. L. 114-254) appropriated the disaster-related supplemental funding.

not yet approved. This does not prohibit work from beginning on approved activities. All activities must meet state and federal DWSRF regulations. Michigan may also apply to the EPA for partial grants if the state does not currently have a project list with costs totaling at least the amount of funds available under WIIN. The EPA will only make a partial award to a state for an amount equal to the total cost of the project list.

An eligible state must submit the following documents to the EPA:

- A. **Supplemental IUP:** SDWA section 1452(b) and WIIN section 2201(d)(2) require states to prepare a plan identifying the intended uses of DWSRF funds and describing how those uses support DWSRF goals.

Under SDWA section 1452(b)(3)(B) and 40 CFR Part 35.3555, IUPs must contain a fundable list of projects expected to receive assistance from funds designated for use in the current IUP and a comprehensive list of projects expected to receive assistance in the future. The fundable list of projects must include:

- the name of the public water system,
- the priority assigned to the project,
- a description of the project,
- the expected terms of financial assistance based on the best information available during IUP development, and
- the population of the system's service area at the time of the loan application.

The comprehensive list must include, at a minimum, the priority assigned to each project and, to the extent known, the expected funding schedule for each project. Michigan 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.

The WIIN requires that supplemental capitalization grant IUPs contain:

- a description of the projects to be funded by the supplemental capitalization grants,
- an explanation of the means by which the projects will address a situation causing a declared emergency in the eligible state,
- the estimated cost of the projects, and
- the projected start date for construction of the projects.

The IUP must contain proposed assistance terms including:

- interest rates,
- the short term and long term goals of the state loan fund,
- a description of uses and amounts planned, consistent with the purposes of the WIIN, for set-aside funds to be taken under SDWA section 1452(g)(2), and
- a description of the means by which the state will choose those projects that are ready to proceed to construction.

An IUP meeting all requirements of the SDWA section 1452, except section 1452(b)(1), is required for approval of a capitalization grant award and release of awarded funds. WIIN section 2201(d)(4)(a) states that the SDWA's notice and comment provision does not apply to the supplemental IUPs authorized by WIIN.

IUPs may be amended at any time as long as amended IUPs continue to meet DWSRF requirements. States must notify the EPA Regional office of any changes to the supplemental IUP.

B. Other Application Components:

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

Capitalization grant requirements from the DWSRF regulations are located in Appendix C.

III. Program Implementation

Unless explicitly waived, all requirements promulgated through statute, regulations or guidance for the Implementation of the DWSRF program remain in effect (e.g., Davis-Bacon Act, American Iron and Steel). Major ongoing program requirements are located in Appendix B. Below are WIIN-specific implementation elements:

- A. **Funding Amount:** \$100,000,000 is available to provide additional capitalization grants to eligible states pursuant to SDWA section 1452 (42 U.S.C. 300j-12). These funds are available for 18 months, beginning December 10, 2016. After this 18-month period, unobligated funds (i.e., funds not awarded by the EPA to eligible states) shall be available to provide additional grants to states to capitalize state loan funds under the base DWSRF program as provided under SDWA section 1452.
- B. **Eligibility:** The term “eligible state” means a state for which the President has declared an emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) relating to the public health threats associated with the presence of lead or other contaminants in drinking water provided by a public water system. The term “eligible system” means a public water system that has been the subject of an emergency declaration referred to above. Currently, only the City of Flint in the State of Michigan meet the eligibility requirements for these funds.
- C. **Purpose:** Michigan may provide assistance to the City of Flint for the purpose of addressing lead or other contaminants in drinking water, including repair and replacement of lead service lines and public water system infrastructure. Unless explicitly waived, all requirements under the SDWA (42 U.S.C. 300f et seq.) shall apply to the funding.
- D. **Specific Statutory Changes Pursuant to WIIN:** The WIIN Act contains revisions to the SDWA for purposes of the supplemental DWSRF funding:
 - a. **Additional Subsidization**
 - i. WIIN Citation:
WIIN Section 2201 (b)(3) INAPPLICABILITY OF LIMITATION. — Section 1452(d)(2) of the Safe Drinking Water Act (42) U.S.C. 300j-12(d)(2)) shall not apply to—

- a. any funds provided pursuant to subsection (d) of this section;
 - b. any other assistance provided to an eligible system; or
 - c. any funds required to match the funds provided under subsection (d).
- ii. Explanation: Historically, for each fiscal year, the total amount of loan subsidies made by a state pursuant to paragraph (1) in SDWA section 1452(d) may not exceed 30 percent of the amount of the capitalization grant received by the state for the year.

This provision of WIIN means that the funds provided as supplemental DWSRF funds in the CR (\$100 million) and the funds a state is required to match (\$20 million) are not subject to the restriction of additional subsidy to 30 percent of the capitalization grant. If the supplemental capitalization grant amount is \$100 million and the state match is \$20 million, then up to \$120 million may be provided as additional subsidization. This means that a state may forgive loans made to an eligible system up to \$120 million.

b. Intended Use Plan

- i. WIIN Citation:

***WIIN Section 2201 (d)(4) APPLICABILITY.** — Section 1452(b)(1) of the Safe Drinking Water Act (42 U.S.C. 300j-12(b)(1)) shall not apply to a supplement to an intended use plan under paragraph (2).*

- ii. Explanation: This means that the supplemental IUP for purposes of WIIN funding is not subject to public review and comment. State laws may still require public review and comment for projects to be included in an IUP.

- E. Cash Draws:** Disbursements for projects funded by WIIN must not be drawn from other open DWSRF capitalization grants unless the projects are jointly funded by the WIIN supplemental capitalization grant and base DWSRF program funding.

The state must maintain federal cash draw proportionality throughout the term of the capitalization grant via one of these two options:

1. The state may first disburse 100 percent of the state matching funds (\$20 million) associated with the federal grant and then draw from the federal grant at a federal cash draw ratio of 100 percent; or
2. The state may make proportional draws (federal ratio = 83.33 percent; state match = 16.67 percent), with the proviso that if the state intends to use any portion of the capitalization grant to fund set-aside activities, the federal cash draw ratio for disbursements for eligible project expenses must be adjusted to reflect the intended federal funding for set-aside activities.

- F. Reporting:** Transparency is of the utmost importance to ensure that the funds are being used effectively and efficiently to address drinking water needs. Michigan must use the EPA's Drinking Water Project and Benefits Reporting System (PBR) to report key WIIN-funded project characteristics and milestone information, as shown in Appendix F. The EPA recommends that project data be entered into the reporting systems as soon as agreements are signed with assistance recipients. Additional reporting may be required through the terms and conditions of the grant award.

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

Appendix A: Draft Supplemental DWSRF Grant Conditions

Final grant conditions may change prior to award of the grant or at any time given changes to program requirements.

Administrative Terms and Conditions

See <https://www.epa.gov/grants/grant-terms-and-conditions>.

Programmatic Terms and Conditions

1. Payment Schedule

The recipient agrees to accept grant funds that will be released by the EPA utilizing the Treasury's Automated Standard Application for Payment (ASAP) System payment method. Access to these funds will be in accordance with the following schedule:

Federal FY 2017	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Federal (in USD)				
Non-Federal (in USD)				

2. State Match

The recipient agrees to deposit into its State Revolving Fund (SRF) a match equal to at least 20 percent of the amount awarded in the capitalization grant.

3. Intended Use Plan and Operating Agreement

The entire contents of the Intended Use Plan (IUP) and the Operating Agreement (OA) are incorporated hereto by reference and made a part of this Assistance Agreement.

4. Set-Aside Work Plan

The recipient agrees to perform the activities identified and specified in the work program plan, which is made part of this Assistance Agreement. Amendments to the work plans must be submitted to the EPA Regional Project Officer for approval.

5. Set-Aside Sub-Grants and Contracts

The recipient shall provide or make available to the EPA Regional Project Officer copies of the work plans associated with grants and contracts that it may enter into with other agencies and organizations related to activities conducted under this grant. In its semi-annual report, the grant recipient shall include a summary description of activities completed under grants and contracts entered into with funds made available under the grant.

6. Travel

The EPA approves the use of federal funds for travel budgeted in capitalization grants for implementing the DWSRF program. The recipient agrees to use federal funds to participate in training and professional development activities integral to the effective implementation and management of the DWSRF program.

7. Drinking Water National Information Management System (DWNIMS)

The recipient agrees to input data as required by the EPA to the DWNIMS. The EPA agrees to provide technical assistance to the state in its use of the DWNIMS as an information management system.

8. Public Health Benefits Reporting

The recipient of funds for the DWSRF from Public Law 114-254, the 2017 Further Continuing and Security Assistance Appropriations Act and Public Law 114-322 and the Water Infrastructure Improvements for the Nation Act, agrees to comply with all requests for data related to the use of the funds under Section 1452 of the Safe Drinking Water Act, and to report all uses of the funds no less than quarterly, as the Environmental Protection Agency specifies for the Drinking Water Project and Benefits Reporting (PBR) database. This reporting shall include but not be limited to data with respect to the DWSRF discretionary Green Program and additional subsidization requirements, and as outlined in the FY 2012 Procedures document and other data as necessary to carry out the authorities cited in this Grant Condition.

9. Annual Reporting

In accordance with 2 CFR §200.328 and 40 CFR §35.3570, the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental/public health results; 4) compliance with the Green Project Reserve discretionary requirement as outlined in the FY 2012 SRF Procedures document; and 5) use of additional subsidization.

10. Set-Aside Reporting

The recipient agrees to provide to the EPA Regional Project Officer an annual report on the set-aside activities funded under this grant. These reports shall be provided within 90 days of the end of each state fiscal year once the grant is in effect.

11. Program Income from Administrative Fees

The recipient agrees to maintain program income resulting from program operations generated during the project period (e.g. administrative fees collected from DWSRF project loan recipients) in an account separate from the DWSRF project loan fund. In addition, the recipient agrees that such program income shall be used only for purposes related to the administration of the DWSRF program or other purposes authorized pursuant to EPA regulations.

12. Signage

The recipient agrees to comply with the SRF Signage Guidelines in order to enhance public awareness of EPA assistance agreements nationwide. See memorandum, "Guidelines for Enhancing Public Awareness of SRF Assistance Agreements," June 3, 2015.

13. Additional Subsidization

Pursuant to Public Law 114-254, the 2017 Further Continuing and Security Assistance Appropriations Act and Public Law 114-322 and the Water Infrastructure Improvements for the Nation Act, it is state discretion to use up to the amount of the capitalization grant plus the required state match as additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these).

14. Green Project Reserve

The recipient agrees that the funds provided by this capitalization grant may, at the discretion of the recipient, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

15. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

16. American Iron and Steel

(a) Definitions. As used in this award term and condition—

(1) “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements P.L. 114-133, Consolidated Appropriations Act, 2016, Section 424, by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system are produced in the United States except as provided in paragraph (b)(2) of this section and condition.

(2) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that: —

(i) applying the requirement would be inconsistent with the public interest;

(ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) Request for a Waiver under (b)(2) of this section

(1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(2) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(2) of this section.

(2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.

(3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the Consolidated Appropriations Act, 2016 (P.L. 114-133).

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

17. Wage Rate Requirements

The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Appendix B: Ongoing Major DWSRF Program Requirements

1. **Match:** A 20 percent state match is required pursuant to SDWA section 1452(e). The state shall deposit in the state loan fund from state moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the state on or before the date on which the grant payment is made to the state. Federal funds will not be available until the match is secured and deposited into the fund. The IUP must identify the source of state match.
2. **Application of Federal Cross-Cutting Authorities (Cross-Cutters):** A number of federal laws, executive orders, and government-wide policies apply by their own terms to projects and activities receiving federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable.

All projects for which a state provides assistance in amounts up to the amount of the capitalization grant deposited into the Fund must comply with the requirements of the cross-cutters. Activities for which a state provides assistance from capitalization grant funds deposited into set-aside accounts must comply with the requirements of the cross-cutters, to the extent that the requirements of the cross-cutters are applicable.

All programs, projects, and activities for which a state provides assistance are subject to the following federal anti-discrimination laws: Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102.

A state is responsible for ensuring that assistance recipients comply with the requirements of cross-cutters, including initiating any required consultations with state or federal agencies responsible for individual cross-cutters. A state must inform the EPA when consultation or coordination with other federal agencies is necessary to resolve issues regarding compliance with cross-cutter requirements. The EPA issued a memorandum on November 5, 2013, explaining how states may streamline cross-cutter requirement implementation.

See Appendix D for a list of cross-cutters.

3. **State Environmental Review:** A state must conduct environmental reviews of the potential environmental impacts of projects and activities receiving assistance. See Appendix E for the environmental review requirements from the DWSRF regulations.
4. **Single Audit Requirement:** 2 CFR 200 Subpart F requires a Single Audit to be obtained by any assistance recipient expending \$750,000 in federal financial assistance in a fiscal year. This requirement is triggered by expenditures of federal financial assistance from any source, not just the DWSRF.
5. **Eligible Forms of Additional Subsidization:** A state DWSRF may provide additional subsidy assistance in the following forms:
 - a. **Principal Forgiveness** - Principal forgiveness must be granted at the execution of the loan agreement.
 - b. **Negative Interest Loans** - A negative interest loan is a loan for which the rate of interest is such that the total payments over the life of the loan are less than the principal of the loan. The negative interest rate must be included in the loan agreement at the time of execution.

- c. **Grants** - Note that grant recipients under this provision are considered "subgrantees" for the purposes of the EPA's grant regulations at 2 CFR Part 200.
 - i. Information regarding subawards is located at www.epa.gov/grants/epa-policies-epa-grant-recipients. This 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 200.330, 200.331, and 200.332 ("the applicable regulations").
 - ii. EPA subaward policy Grants Policy Issuance (GPI) 16-01:
 - a. *Subaward*: This term is defined at 2 CFR 200.92. Subawards do not include payments to contractors (including consultants) or to individual program beneficiaries such as trainees, interns or fellows.
 - b. Additionally, for the purposes of this Subaward Policy, subawards do not include loans, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or similar transactions entered into with borrowers by recipients of revolving loan fund capitalization grants or other EPA financial assistance agreements. However, borrowers may be subject to the auditing requirements of 2 CFR Part 200, Subpart F in accordance with 2 CFR 200.40(b).

6. **Set-Asides**: States, at their discretion, may take up to 31 percent of their capitalization grant for non-infrastructure "set-aside" activities. There are four distinct set-asides as indicated below (*Note that only Flint, Michigan is currently eligible for DWSRF funding under WIIN, and the two percent set-aside for technical assistance to small systems would not be an eligible expense for this funding, given that the population of Flint is greater than 10,000*):

- a. **Two percent for technical assistance to small systems**: This may be used to provide technical assistance exclusively to public water systems serving 10,000 or fewer persons.
- b. **Four percent, 1/5 percent of the valuation of the fund, or \$400,000 (whichever is greater) for DWSRF program administration and technical assistance**: This may be used to cover the costs of administering the DWSRF program and to provide technical assistance to public water systems of any population size.
- c. **Ten percent for state program management**: This may be used to:
 - i. Develop and implement an operator certification program. An operator certification program governs the licensure of individuals who operate water treatment and distribution facilities. Such a program establishes educational requirements, experience requirements, and examinations for individuals who will serve as operators of water treatment and water distribution facilities.
 - ii. Develop and implement a capacity development strategy. A state capacity development strategy is a plan for ensuring that all water systems develop and maintain the technical, financial and managerial capacity (or capabilities) to consistently deliver water complying with SDWA regulatory standards.
 - iii. Administer or provide technical assistance through source water protection programs. Source water protection programs are designed to prevent contaminants from entering drinking water supplies.

- iv. Administer the state Public Water Supply Supervision (PWSS) program. The PWSS program is the core state drinking water program through which health-based regulatory standards for drinking water are implemented.
- d. **Fifteen percent for local assistance and other state programs:** A state may take a total of up to 15 percent of its capitalization grant for this set-aside. However, no more than 10 percent of the capitalization grant may be used for any one of the following eligible activities:
 - i. Loans to acquire land or conservation easements for protection of source waters. The acquisition of land or conservation easements for source water protection is not an eligible use of the DWSRF infrastructure loan fund. These loans would be subject to the same requirements as DWSRF infrastructure loans. The repayments could flow directly back into the dedicated revolving fund or they could flow back to a separate dedicated lending account for acquisition of land or conservation easements.
 - ii. Loans to provide funding to implement voluntary, incentive based source water quality protection measures. This set aside funds loans for measures to protect source water quality so long as the measures are voluntary and incentive based. These loans would be administered in the same way as those to acquire land or conservation easements.
 - iii. To provide assistance to any public water system as part of a state capacity development strategy. Such assistance may be technical, financial or both.
 - iv. To make expenditures to establish and implement Wellhead Protection Programs under section 1428 of the SDWA.

Appendix C: Capitalization Grant Agreement Regulatory Requirements

40 CFR § 35.3545 Capitalization grant agreement.

(a) *General.* A State must submit a capitalization grant application to EPA in order to receive a capitalization grant award. Approval of an application results in EPA and the State entering into a capitalization grant agreement which is the principal instrument by which the State commits to manage the DWSRF program in accordance with the requirements of section 1452 of the Act and this subpart.

(b) *Content.* In addition to the items listed in paragraphs (c) through (f) of this section, the capitalization grant agreement must contain or incorporate by reference the Application for Federal Assistance (EPA Form 424) and other related forms, IUP, negotiated payment schedule, State environmental review process (SERP), demonstrations of the specific capitalization grant agreement requirements listed in § 35.3550, and other documentation required by the Regional Administrator (RA). The capitalization grant agreement must also define the types of performance measures, reporting requirements, and oversight responsibilities that will be required to determine compliance with section 1452 of the Act.

(c) *Operating agreement.* At the option of a State, the framework and procedures of the DWSRF program that are not expected to change annually may be described in an Operating Agreement. The Operating Agreement may be amended if the State negotiates the changes with EPA.

(d) *Attorney General certification.* With the capitalization grant application, the State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification that:

- (1) The authority establishing the DWSRF program and the powers it confers are consistent with State law;
- (2) The State may legally bind itself to the proposed terms of the capitalization grant agreement; and
- (3) An agency of the State is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart.

(e) *Roles and responsibilities of agencies.* If more than one State agency participates in the implementation of the DWSRF program, the State must describe the roles and responsibilities of each agency in the capitalization grant application and include a Memorandum of Understanding or interagency agreement describing these roles and responsibilities.

(f) *Process for evaluating capability and compliance.* A State must include in the capitalization grant application a description of the following:

- (1) The process it will use to assess the technical, financial, and managerial capability of all systems requesting assistance to ensure that the systems are in compliance with the requirements of the Act.
- (2) If a State provides assistance to systems that lack technical, financial, and managerial capability, the process it will use to ensure that the systems undertake feasible and appropriate changes in operations to comply with the requirements of the Act over the long-term.

(3) If a State provides assistance to systems in significant noncompliance with any national primary drinking water regulation or variance, the process it will use to ensure that the systems return to compliance.

40 CFR § 35.3550 Specific capitalization grant agreement requirements.

(a) *General.* A State must agree to comply with this subpart, 2 CFR part 200, the EPA general assistance regulations in 2 CFR part 1500 and the specific conditions of the grant. A State must also agree to the following requirements and, in some cases, provide documentation as part of the capitalization grant application.

(b) *Comply with State statutes and regulations.* A State must agree to comply with all State statutes and regulations that are applicable to DWSRF program funds including capitalization grant funds, State match, interest earnings, net bond proceeds, repayments, and funds used for set-aside activities.

(c) *Demonstrate technical capability.* A State must agree to provide documentation demonstrating that it has adequate personnel and resources to establish and manage the DWSRF program.

(d) *Accept payments.* A State must agree to accept capitalization grant payments in accordance with a payment schedule negotiated between EPA and the State.

(e) *Make binding commitments.* A State must agree to enter into binding commitments with assistance recipients to provide assistance from the Fund.

(1) Binding commitments must be made in an amount equal to the amount of each capitalization grant payment and accompanying State match that is deposited into the Fund and must be made within one year after the receipt of each grant payment.

(2) A State may make binding commitments for more than the required amount and credit the excess towards the binding commitment requirements of subsequent grant payments.

(3) If a State is concerned about its ability to comply with the binding commitment requirement, it must notify the RA and propose a revised payment schedule for future grant payments.

(f) *Deposit of funds.* A State must agree to promptly deposit DWSRF program funds into appropriate accounts.

(1) A State must agree to deposit the portion of the capitalization grant to be used for projects into the Fund.

(2) A State must agree to maintain separate and identifiable accounts for the portion of the capitalization grant to be used for set-aside activities.

(3) A State must agree to deposit net bond proceeds, interest earnings, and repayments into the Fund.

(4) A State must agree to deposit any fees, which include interest earned on fees, into the Fund or into separate and identifiable accounts.

(g) *Provide State match.* A State must agree to deposit into the Fund an amount from State monies that equals at least 20 percent of each capitalization grant payment.

(1) A State must identify the source of State match in the capitalization grant application.

(2) A State must deposit the match into the Fund on or before the date that a State receives each payment for the capitalization grant, except when a State chooses to use a letter of credit (LOC)

mechanism or similar financial arrangement for the State match. Under this mechanism, payments to this LOC account must be made proportionally on the same schedule as the payments for the capitalization grant. Cash from this State match LOC account must be drawn into the Fund as cash is drawn into the Fund through the Automated Clearing House (ACH).

(3) A State may issue general obligation or revenue bonds to derive the State match. The net proceeds from the bonds issued by a State to derive the match must be deposited into the Fund and the bonds may only be retired using the interest portion of loan repayments and interest earnings of the Fund. Loan principal must not be used to retire State match bonds.

(4) If the State deposited State monies in a dedicated revolving fund after July 1, 1993, and prior to receiving a capitalization grant, the State may credit these monies toward the match requirement if:

(i) The monies were deposited in a separate revolving fund that subsequently became the Fund after receiving a capitalization grant and they were expended in accordance with section 1452 of the Act;

(ii) The monies were deposited in a separate revolving fund that has not received a capitalization grant, they were expended in accordance with section 1452 of the Act, and an amount equal to all repayments of principal and payments of interest from loans will be deposited into the Fund; or

(iii) The monies were deposited in a separate revolving fund and used as a reserve for a leveraged program consistent with section 1452 of the Act and an amount equal to the reserve is transferred to the Fund as the reserve's function is satisfied.

(5) If a State provides a match in excess of the required amount, the excess balance may be credited towards match requirements associated with subsequent capitalization grants.

(h) *Provide match for State program management set-aside.* A State must agree to provide a dollar for dollar match for expenditures made under the State program management set-aside in accordance with § 35.3535(d)(2). This match is separate from the 20 percent State match requirement for the capitalization grant in paragraph (g) of this section and must be identified as an eligible credit, deposited into set-aside accounts, or documented as in-kind services.

(i) *Use generally accepted accounting principles.* A State must agree to ensure that the State and public water systems receiving assistance will use accounting, audit, and fiscal procedures conforming to Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board or, in the case of privately-owned systems, the Financial Accounting Standards Board. The accounting system used for the DWSRF program must allow for proper measurement of:

(1) Revenues earned and other receipts, including but not limited to, loan repayments, capitalization grants, interest earnings, State match deposits, and net bond proceeds;

(2) Expenses incurred and other disbursements, including but not limited to, loan disbursements, repayment of bonds, and other expenditures allowed under section 1452 of the Act; and

(3) Assets, liabilities, capital contributions, and retained earnings.

(j) *Conduct audits.* In accordance with § 35.3570(b), a State must agree to comply with the provisions of the Single Audit Act Amendments of 1996. A State may voluntarily agree to conduct annual independent audits.

- (k) *Dedicated repayment source.*** A State must agree to adopt policies and procedures to assure that assistance recipients have a dedicated source of revenue for repayment of loans, or in the case of privately-owned systems, assure that recipients demonstrate that there is adequate security to assure repayment of loans.
- (l) *Efficient expenditure.*** A State must agree to commit and expend all funds as efficiently as possible and in an expeditious and timely manner.
- (m) *Use funds in accordance with IUP.*** A State must agree to use all funds in accordance with an IUP that was prepared after providing for public review and comment.
- (n) *Biennial report.*** A State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement.
- (o) *Comply with cross-cutters.*** A State must agree to comply with all applicable Federal cross-cutting authorities.
- (p) *Comply with provisions to avoid withholdings.*** A State must agree to demonstrate how it is complying with the requirements of capacity development authority, capacity development strategy, and operator certification program provisions in order to avoid withholdings of funds under § 35.3515(b)(1)(i) through (b)(1)(iii).

Appendix D: Cross-Cutters

List of Cross-Cutting Federal Authorities for Assistance Loans and Subgrants:

Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148 and 13690
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- National Historic Preservation Act, Pub. L. 89-655, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended

Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372
- Drug-Free Workplace Act, Pub. L. 100-690
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Equal Employment Opportunity, Executive Order 11246
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L. 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act, Pub. L. 88-352

Disadvantaged Business Enterprise Authorities

- Participation by Disadvantaged Business Enterprises in Procurement Under Environmental

Appendix E: State Environmental Review Requirements

40 CFR § 35.3580 Environmental review requirements.

(a) *General.* With the exception of activities identified in paragraph (b) of this section, a State must conduct environmental reviews of the potential environmental impacts of projects and activities receiving assistance.

(b) *Activities excluded from environmental reviews.* A State must conduct environmental reviews of source water protection activities under § 35.3535, unless the activities solely involve administration (e.g., personnel, equipment, travel) or technical assistance. A State is not required to conduct environmental reviews of all the other eligible set-aside activities under § 35.3535 because EPA has determined that, due to their nature, they do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment. A State does not need to include provisions in its SERP for excluding these activities. Activities excluded from environmental reviews remain subject to other applicable Federal cross-cutting authorities under § 35.3575.

(c) *Tier I environmental reviews.* All projects that are assisted by the State in amounts up to the amount of the capitalization grant deposited into the Fund must be reviewed in accordance with a SERP that is functionally equivalent to the review undertaken by EPA under the National Environmental Policy Act (NEPA). With the exception of activities excluded from environmental reviews in paragraph (b) of this section, activities for which a State provides assistance from capitalization grant funds deposited into set-aside accounts must also be reviewed in accordance with a SERP that is functionally equivalent to the review undertaken by EPA under the NEPA. A State may elect to apply the procedures at 40 CFR part 6 and related subparts or apply its own “NEPA-like” SERP for conducting environmental reviews, provided that the following elements are met:

(1) *Legal foundation.* A State must have the legal authority to conduct environmental reviews of projects and activities receiving assistance. The legal authority and supporting documentation must specify:

- (i) The mechanisms to implement mitigation measures to ensure that a project or activity is environmentally sound;
- (ii) The legal remedies available to the public to challenge environmental review determinations and enforcement actions;
- (iii) The State agency that is primarily responsible for conducting environmental reviews; and
- (iv) The extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.

(2) *Interdisciplinary approach.* A State must employ an interdisciplinary approach for identifying and mitigating adverse environmental effects including, but not limited to, those associated with other cross-cutting Federal environmental authorities.

(3) Decision documentation. A State must fully document the information, processes, and premises that influence its decisions to:

- (i)** Proceed with a project or activity contained in a finding of no significant impact (FNSI) following documentation in an environmental assessment (EA);
- (ii)** Proceed or not proceed with a project or activity contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS);
- (iii)** Reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FNSI or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project or activity; and
- (iv)** If a State elects to implement processes for either partitioning an environmental review or categorically excluding projects or activities from environmental review, the State must similarly document these processes in its proposed SERP.

(4) Public notice and participation. A State must provide public notice when: a CE is issued or rescinded; a FNSI is issued but before it becomes effective; a decision that is issued 5 years earlier is reaffirmed or revised; and prior to initiating an EIS. Except with respect to a public notice of a CE or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project or activity will be allowed. A public hearing or meeting must be held for all projects and activities except for those having little or no environmental effect.

(5) Alternatives consideration. A State must have evaluation criteria and processes which allow for:

- (i)** Comparative evaluation among alternatives, including the beneficial and adverse consequences on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation; and
- (ii)** Devising appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse impacts.

(d) Tier II environmental reviews. A State may elect to apply an alternative SERP to all projects and activities (except those activities excluded from environmental reviews in paragraph (b) of this section) for which a State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the Fund or set-aside accounts, provided that the process:

- (1)** Is supported by a legal foundation which establishes the State's authority to review projects and activities;
- (2)** Responds to other environmental objectives of the State;
- (3)** Provides for comparative evaluations among alternatives and accounts for beneficial and adverse consequences to the existing and future environment;
- (4)** Adequately documents the information, processes, and premises that influence an environmental determination; and
- (5)** Provides for notice to the public of proposed projects and activities and for the opportunity to comment on alternatives and to examine environmental review documents. For projects or activities determined by the State to be controversial, a public hearing must be held.

(e) *Categorical exclusions (CEs).* A State may identify categories of actions which do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment and which the State will exclude from the substantive environmental review requirements of its SERP. Any procedures under this paragraph must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(f) *Environmental reviews for refinanced projects or reimbursed project costs.* A State must conduct an environmental review which considers the impacts of a project based on conditions of the site prior to initiation of the project. Failure to comply with the environmental review requirements cannot be justified on the grounds that costs have already been incurred, impacts have already been caused, or contractual obligations have been made prior to the binding commitment.

(g) *EPA approval process.* The RA must review and approve any State “NEPA-like” and alternative procedures to ensure that the requirements for Tier I and Tier II environmental reviews have been met. The RA will conduct these reviews on the basis of the criteria for evaluating NEPA-like reviews contained in Appendix A to this subpart.

(h) *Modifications to approved SERPs.* Significant changes to State environmental review procedures must be approved by the RA.

Appendix F: DWSRF Project and Benefits Reporting Data Elements

Data Field	Required/Optional
% Funded by DWSRF	optional
Additional Subsidy Provided	required
Address Line 1	required
Address Line 2	optional
Age of System	optional
Amount of additional subsidy provided used to fund GPR	required if green
Assistance applies to _ grant year requirements	required
Assistance Type	required
Based on states criteria, could the borrower have afforded the project without additional subsidy provided	required
Borrower	required
Borrower Population	optional
City, State, Zip Code	required
Compliance Objectives	optional
Congressional District	optional
Counties Served Primary	optional
Disadvantaged Assistance	required
Energy Efficiency Amount	required if green
Funding is complete and funded amount has changed from initial amount	required
Grant Amount \$	required
Grant Award date	required
Grant number	required
Green Infrastructure Amount	required if green
Green Innovative Amount	required if green
Incremental Funding	optional
IUP Year	optional
Loan Execution Date	required
Loan Interest Rate	required
Loan Term	optional
Negative Interest Amount \$	required
Net Loan Amount	optional
NIMS project categories (Transmission, Treatment, etc....)	required
Number of connection by the project	optional
Number of connections by the system	optional
Number of Projects Funded	required
Number of System Eliminated	optional
Original Tracking Number	optional
Other County 1	optional
Other County 2	optional

Other Project Comments	optional
Other tracking number	optional
Ownership Type	optional
Phase #	optional
Population Served by the project	optional
Population Served by the system	required
Principal Forgiveness Amount \$	required
Project Completion Date	required
Project Consolidates Systems	required
Project Creates New Systems	required
Project Description	required
Project Includes Green Project Reserve	required
Project Name	required
Project Purpose	required
Project Start Date	required
Public Health Impact Description	required
PWSID Number	required
Same Health Benefits	optional
State Market Interest Rate	optional
State Organization receiving grant	required
State set-aside Funding Amount	required
State set-aside Funding Type	required
State set-aside information recipient	required
System Name	required
System Type	required
Total Assistance (Final Amount)	required
Total Assistance (Initial Amount)	required
Tracking number	required
Water Efficiency Amount	required if green

This list does not include FFATA requirements.

Appendix G: Eligible DWSRF Projects

The WIIN Act did not change DWSRF project eligibility. Basic information regarding project eligibility is located at 40 CFR Part 35 Subpart L.

40 CFR § 35.3520

(b) *Eligible projects* -

(1) *General.* Projects that address present or prevent future violations of health-based drinking water standards are eligible for assistance. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are eligible for assistance if they are needed to maintain compliance or further the public health protection objectives of the Act.

(2) Only the following project categories are eligible for assistance from the Fund:

(i) *Treatment.* Examples of projects include installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the Act.

(ii) *Transmission and distribution.* Examples of projects include installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source.* Examples of projects include rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage.* Examples of projects include installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation.* Eligible projects are those needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems.* Eligible projects are those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. A project must be a cost-effective solution to addressing the problem. A State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem. Capacity to serve future population growth cannot be a substantial portion of a project.

(c) Eligible project-related costs. In addition to costs needed for the project itself, the following project-related costs are eligible for assistance from the Fund:

- (1)** Costs for planning and design and associated pre-project costs. A State that makes a loan for only planning and design is not required to provide assistance for completion of the project.
- (2)** Costs for the acquisition of land only if needed for the purposes of locating eligible project components. The land must be acquired from a willing seller.
- (3)** Costs for restructuring systems that are in significant noncompliance with any national primary drinking water regulation or variance or that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the systems are ineligible under paragraph (d)(2) or (d)(3) of this section.

(d) Ineligible systems. Assistance from the Fund may not be provided to:

- (1)** Federally-owned public water systems and for-profit noncommunity water systems.
- (2)** Systems that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the assistance will ensure compliance and the owners or operators of the systems agree to undertake feasible and appropriate changes in operations to ensure compliance over the long-term.
- (3)** Systems that are in significant noncompliance with any national primary drinking water regulation or variance, unless:
 - (i)** The purpose of the assistance is to address the cause of the significant noncompliance and will ensure that the systems return to compliance; or
 - (ii)** The purpose of the assistance is unrelated to the cause of the significant noncompliance and the systems are on enforcement schedules (for maximum contaminant level and treatment technique violations) or have compliance plans (for monitoring and reporting violations) to return to compliance.

(e) Ineligible projects. The following projects are ineligible for assistance from the Fund:

- (1)** Dams or rehabilitation of dams.
- (2)** Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.
- (3)** Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.
- (4)** Projects needed primarily for fire protection.
- (5)** Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.
- (6)** Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under section 1452(i) of the Act.

(f) Ineligible project-related costs. The following project-related costs are ineligible for assistance from the Fund:

- (1) Laboratory fees for routine compliance monitoring.
- (2) Operation and maintenance expenses.