



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

OFFICE OF WATER

SUBJECT: Response to the Office of Inspector General Report, *The EPA Could Not Readily Identify More Than \$162 Million in Water Infrastructure Improvements for the Nation Act Grant Funds*, Report No. 23-N-0019, June 20, 2023

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TO: Sean W. O'Donnell
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The U.S. Environmental Protection Agency's (EPA or the Agency) Office of Water (OW) appreciates the opportunity to respond to the Office of Inspector General's (OIG) report entitled *The EPA Could Not Readily Identify More Than \$162 Million in Water Infrastructure Improvements for the Nation Act Grant Funds*, (Report No. 23-N-0019).

This response provides additional background and clarification of the information provided to the OIG during EPA's engagement on the audit of two Water Infrastructure Improvements for the Nation (WIIN) Act grant programs. This information will reiterate that EPA has not overspent appropriated funds. During this engagement, the OIG requested a recipient list for WIIN Act Section 2104 (Small, Underserved, and Disadvantaged Communities) and Section 2105 (Reducing Lead in Drinking Water) grant programs that included recipients' location, project amount and project type, as well as the year the grant was given. EPA provided the OIG with the breakdown of information requested. OW provided the project amount information based on total project costs, and the Regions provided the OIG with project-level award amounts. Throughout conversations and emails with the OIG, EPA explained that "project amount" (i.e., the total project cost) may not equal the EPA award amount for a particular project. EPA is concerned that the OIG may have misinterpreted this distinction and, if so, this may have impacted OIG's data collection efforts.

EPA is deeply committed to ensuring that communities have access to the resources they need to address infrastructure and other drinking water issues. Section 2104 of the WIIN Act established the **Small, Underserved, and Disadvantaged Communities (SUDC)** grant program that authorized funding to states, territories, and tribes to support projects and activities in underserved, small and disadvantaged communities to access and invest in water infrastructure and comply with the Safe Drinking Water Act (SDWA).¹ All grants awarded under this grant program must be for projects in

¹ The SUDC grant program requirements established by the WIIN Act are codified in Section 1459A of SDWA, as amended, 42 U.S.C. § 300j-19a. For more information on this grant program, for the states and territories program see <https://www.epa.gov/dwcapacity/wiin-grant-small-underserved-and-disadvantaged-communities-grant-program-0>, and for the tribal program see <https://www.epa.gov/tribaldrinkingwater/wiin-act-section-2104-small-underserved-and-disadvantaged-communities-grant>.

underserved communities that are small and disadvantaged per Section 1459A of SDWA.

EPA OW's Office of Ground Water and Drinking Water (OGWDW) has developed detailed implementation guidance explaining the program requirements for this grant program.² Of note, SDWA Section 1459A does not limit grants to lead service line projects. For example, an underserved community could receive a grant to provide piped water service to homes unserved by water services. The OIG report's assertion that “[t]he EPA could not accurately determine whether WIIN Act funds were distributed to replace lead service lines in disadvantaged communities in accordance with applicable guidance” is incorrect.³

The OIG report's assertion that EPA overspent funds appropriated for this grant program is incorrect. The OIG report describes differences between appropriations, grant awards, and total project costs and refers to these differences as a “discrepancy” and evidence that EPA's oversight of these grant funds was unreliable. EPA is concerned that the report findings and conclusions are based on an incorrect understanding of federal grant terminology, including an assumption that appropriated funds should equal total project costs for a grant program.

To manage its budget and appropriations, EPA has funds controls in place to ensure overspending does not occur. Notably, funds are committed in the Agency's Compass Financial System (CFS),⁴ and the system does not allow EPA to spend more funds than appropriated by Congress. Compass Data Warehouse (CDW), the EPA's financial reporting system, pulls data from CFS. CDW⁵ shows EPA has funds remaining for these programs, not funds overspent.

Based on data from CDW, Figure 1 below shows that SUDC and the Reducing Lead in Drinking Water grant programs were appropriated \$162.8 million between fiscal years 2018 and 2021 and \$124.9 million of these funds have been obligated. This exemplifies how the agency uses existing systems to track and ensure funds control. EPA will continue to track and control these funds to ensure appropriated funds are within appropriated amounts for WIIN grants.

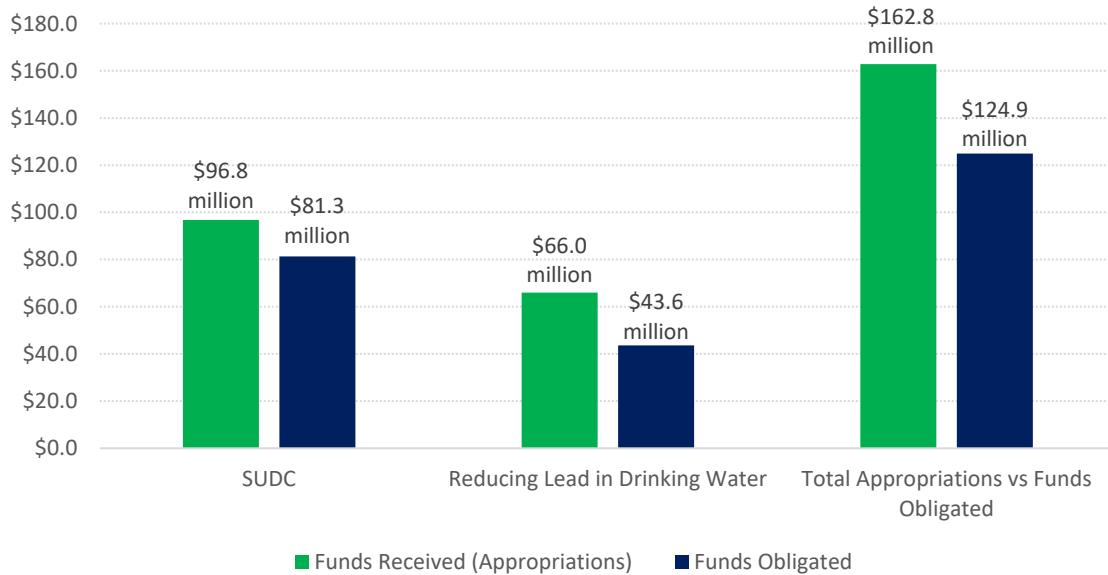
² Small, Underserved, and Disadvantaged Communities Grant Program Implementation Document Updated for FY 2021. Available online at: <https://www.epa.gov/dwcapacity/wiin-grant-small-underserved-and-disadvantaged-communities-grant-program-0>.

³ The OIG report did not state what guidance to which it was referring.

⁴ Compass Financial System provides both comprehensive financial planning capabilities and a means to record EPA financial transactions. All Compass Financials subsystems are fully integrated, so that transactions update budgets, financial plans, and the general ledger at the time they are processed.

⁵ The EPA's Compass Data Warehouse is a collection of data in one database from several information systems used by the EPA including Integrated Financial Management System, Employee Payroll System, Contract Payment System, and more.

Figure 1: Funds EPA Received and the Funds Obligated for Fiscal Years 2018-2021 for SUDC and Reducing Lead in Drinking Water Grants*



*The amounts in this figure are further broken down in Attachment 1.

OW staff provided feedback prior to the issuance of this OIG report, via a meeting about the draft report, and in writing shortly after that meeting to explain the difference between total project costs and grant awards. However, these clarifications were only used as a footnote to OIG report Tables 1 and 2 that did not accurately reflect what EPA stated. The OIG report states at pg. 4, “According to the Office of Water, these numbers include all project costs from all appropriation sources and not just WIIN Act grant funds.”⁶ This is an incorrect understanding of the information EPA provided.

As stated above, project costs can include costs that are not appropriated as federal funds. The OIG obtained other sources of data, including from the Next Generation Grant System (NGGS), that document the difference between the EPA grant award and the total project costs. Despite EPA’s efforts to clarify to the OIG the difference between total project costs and grant award amount, and NGGS data further documenting this distinction, the OIG did not revise its report to reflect this information and instead moved forward with an erroneous conclusion that EPA overspent its appropriations.

The below table provides an example calculation (sent to the OIG in March 2023) to illustrate how the federal grant amount plus the required cost share equal a total project cost. Cost share is calculated as percentage of total project cost. The column headings differ from the terminology used in the OIG report.

⁶ The OIG footnote is incorrect because “all appropriation sources” is incorrect. The word appropriation should be struck and instead read “from all sources, including state match and other funding.” When funds were appropriated for these two grant programs, EPA applied the term “project cost” under the definition that is customarily used from 2 CFR Part 200.1. That definition does not limit project costs only to costs from “all appropriation sources [sic].”

Example Calculation of 45% Minimum Non-Federal Cost Share*

Federal Grant Amount (55%)	Required Cost Share (45%)	Total Project Cost (100%)
\$200,000	\$163,636	\$363,636

*The calculation in this table is for illustrative purposes only. It utilizes the 45% cost share requirement for the Small and Disadvantaged Non-Competitive Grant Program 2019 Notice of Funding Availability.

The OIG report focuses on examples of data collected for Regions 2 and 7 on the SUDC grant program and highlights the differences that exist with the various data sources. EPA is actively working to understand what information OIG used as the basis for its calculations and the reason for those results.

The OIG report also asserts resistance and lack of ability to provide information on EPA's part. This is simply not true. Attachment 2 provides a chronology of interactions and response to the OIG as the EPA is committed to providing timely and accurate information to the OIG.

The EPA is also providing additional detail in Attachments 3 and 4 to ensure the findings within this report and certain grants and appropriations terminology are used accurately. Attachment 3 provides definitions for terminology used throughout this memorandum, and Attachment 4 provides a summary of steps for how an appropriation becomes an award.

The OIG report also briefly touches on the **Reducing Lead in Drinking Water Grant Program**.⁷ Awards for this program, which is a competitive grant program, include a cost share requirement as outlined in the FY 2020 Request for Applications (RFA) for Reduction of Lead in Drinking Water available on EPA's website.⁸ The project cost provided on EPA's website show total project costs that include this cost share, and the OIG report incorrectly states those amounts as awards of appropriated funds in Table 2 and Figure 2. OIG again acknowledges, albeit incorrectly, in a footnote of Table 2 that “[a]ccording to the Office of Water, these numbers include all project costs from all appropriation sources and not just WIIN Act grant funds” but then uses that amount in Figure 2 to conclude EPA spent more than appropriated.

EPA also has several other areas of concern with the OIG report and has outlined them in Attachment 5.

The OW acknowledges the important role that the OIG plays in auditing EPA programs to ensure that proper oversight and management controls are in place. EPA's financial tracking system (Compass Data Warehouse) accurately shows EPA has not overspent appropriated funds and has the necessary controls in place. EPA continues to stand ready to work with the OIG on this audit.

If you have any questions regarding this memorandum, please have your staff contact OW's Acting

⁷ The Reducing Lead in Drinking Water grant program requirements established by the WIIN Act are codified in Section 1459B of SDWA, as amended, 42 U.S.C. § 300j-19b. See <https://www.epa.gov/dwcapacity/wiin-grant-reducing-lead-drinking-water> and <https://www.epa.gov/tribaldrinkingwater/wiin-act-section-2105-reducing-lead-drinking-water-tribal-grant-program>.

⁸ See the FY 2020 RFA at <https://www.epa.gov/dwcapacity/wiin-grant-reducing-lead-drinking-water#historical1> for details about the applicable cost share. The FY 2022 RFA for the FY 2021 funds waived cost share due to financial constraints caused by the COVID-19 pandemic across the country.

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Attachments:

1. Appropriation and Budget Breakdown for FYs 2018 – 2021 for Small, Disadvantaged, and Underserved Communities and Reduction of Lead in Drinking Water Grants
2. Chronology of Interactions between OW and OIG
3. Terminology Used in This Memorandum
4. Breakdown of How Grant Funds are Spent from Authorization to Appropriation to Award
5. Other Areas of Concern EPA Has with the OIG Report

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Attachment 1. Appropriation and Budget Breakdown for FYs 2018 – 2021 for Small, Disadvantaged, and Underserved Communities and the Reduction of Lead in Drinking Water Grants

Note: The source of the below data is from EPA's Compass Data Warehouse (CDW), one of EPA's budget systems. CDW is updated in real time, and the tables reflect data extracted on Friday, June 30, 2023. Prior Fiscal Year (FY) funds which are not obligated, in the FY they are appropriated, become carryover funds. As more grants are awarded, the dollar amounts are subject to change, making it very difficult to precisely replicate this data to the exact dollar amounts.

**Small, Disadvantaged, and Underserved Communities Grant
WIIN Section 2104**

Fiscal Year (FY)	Funds Received by the EPA (Appropriated Funds by FY)	Carryover Funds from Previous FY (Not Cumulative)	Administrative Funds Spent by FY	Funds Reported as Awarded by OW (Funds Awarded to Grants by FY)	Total Funds Obligated by FY	Bottom Line Total Funds Available for Obligation (Appropriated minus Obligated)
	a	b	c	d	e=c+d	f=a-e
2018	\$20,000,000.00	\$0.00	\$127,000.00	\$0.00	\$127,000.00	
2019	\$25,000,000.00	\$19,873,000.00	\$329,420.47	\$12,900,502.53	\$13,229,923.00	
2020	\$25,408,000.00	\$31,643,077.00	\$257,241.99	\$44,586,807.51	\$44,844,049.50	
2021	\$26,408,000.00	\$12,207,027.60	\$316,582.09	\$22,822,695.91	\$23,139,278.00	
Totals	\$96,816,000.00		\$1,030,244.55	\$80,310,005.95	\$81,340,250.50	\$15,475,749.50

**Reduction of Lead in Drinking Water
WIIN Section 2105**

Fiscal Year (FY)	Funds Received by the EPA (Appropriated Funds by FY)	Carryover Funds from Previous FY (Not Cumulative)	Administrative Funds Spent by FY	Funds Reported as Awarded by OW (Funds Awarded to Grants by FY)	Total Funds Obligated by FY	Bottom Line Total Funds Available for Obligation (Appropriated minus Obligated)
	a	b	c	d	e=c+d	f=a-e
2018	\$10,000,000.00	\$0.00	\$62,000.00	\$0.00	\$62,000.00	
2019	\$15,000,000.00	\$9,938,000.00	\$224,097.61	\$2,999,998.99	\$3,224,096.60	
2020	\$19,511,000.00	\$21,713,903.40	\$105,535.73	\$39,900,046.97	\$40,005,582.70	
2021	\$21,511,000.00	\$1,219,320.70	\$166,582.09	\$187,000.01	\$353,582.10	
Totals	\$66,022,000.00		\$558,215.43	\$43,087,045.97	\$43,645,261.40	\$22,376,738.60

Attachment 2. Chronology of Interactions between OW and OIG

- August – October 2022: OIG contacted OW on several occasions to request information on two grant programs, including amounts and recipients of awards for each year. The two programs were amendments to the Safe Drinking Water Act (SDWA) that were part of the Water Infrastructure Improvements for the Nation (WIIN Act), specifically WIIN §2104, which was codified in SDWA §1459A, titled “Assistance for Small and Disadvantaged Communities (SUDC)” and WIIN §2105, which added a grant program to SDWA at §1459B, titled “Reducing Lead in Drinking Water.” SUDC awards grants non-competitively to states, and the Reducing Lead in Drinking Water is a competitive grant program. In response, within two weeks OW provided links to publicly available website information, which includes award details such as dates and the grant application process.
- November 17, 2022: The OIG officially initiated the audit and sent written notice of Audit # OA-FY23-0037 “EPA and States’ Identification and Replacement of Lead Service Lines in Disadvantaged Communities” to the agency.
 - According to the OIG’s notification, the audit was expected to “determine whether the EPA distributed Water Infrastructure Improvements for the Nation, or WIIN, Act funds to replace lead service lines in disadvantaged communities in adherence with applicable guidance.” Note that despite the OIG’s characterization, the WIIN Act was not an appropriations act; no funds were distributed via the WIIN Act.
- December 1, 2022: OW participated in an entrance conference with OIG.
- December 21, 2023: OIG requested information (via email) that OW previously provided as links to website information (e.g., grant recipients, award dates, project amounts, project description, and Point of Contact [POC]) be aggregated into a spreadsheet. OIG also requested all email inquiries to the Safewater Hotline email related to lead service lines (nearly 500 emails). They requested this by December 31, 2023.
- January 25, 2023: OW provided a detailed response in two spreadsheets and hundreds of Safewater emails were provided to OIG.
- February 3, 2023: OW participated in a status meeting. During that meeting, OIG stated that they intended to issue a management alert, due to delays in OW providing requested data. The OIG cited delays going back to their initial scoping inquiries back in August 2022.
- February 2023: OIG emailed, separately, the Regional EPA contacts and OW (February 8, 2023). The OIG requested that OW provide “How much WIIN Act funds has been appropriated to the EPA in total, since its inception”; OW provided enacted levels on February 9, 2023.
 - OIG emailed OW with the following follow up questions, verbatim, related to appropriated funds on February 16, 2023, as follows:
 1. Who makes the decision on the appropriated amounts to both sections of the WIIN Act?
 2. We noticed that OW funded more money to grantees for both sections than what both programs were appropriated in each fiscal year, what process allows a grant program to spend more than what it was appropriated for?
 3. Can you provide any documentation that explains why both sections were appropriated lesser amounts than both sections were authorized by public law (Congress)?
 4. Can you provide the documentation that allows both sections of the WIIN Act to exceed the amounts they were appropriated for each fiscal year?
- February-March 2023: OW provided the OIG responses to questions 1 and 3 on February 16, 2023, and requested additional information/data related to questions 2 and 4. On February 17,

2023, the OIG sent OW the requested information. OW sent comprehensive responses to questions 2 and 4 to the OIG on March 15, 2023.

- March 15, 2023: OIG contacted OW with additional clarifying questions about data they had collected over the course of the audit including OW spreadsheets, NGGS, OW webpage, and Regional data. OIG asked OW to explain why the values from these different data sources did not match. OW responded on March 17, 2023. OW also asked the OIG to provide additional information about a WIIN § 2104 table with Regional data, and they responded on March 20, 2023.
- April 20, 2023: OW provided the OIG final responses to all outstanding questions.
- May 22, 2023: OIG provided a draft “Statement of Findings” management alert report to OW.
- June 1, 2023: OW met with OIG to discuss their draft report.
- June 6, 2023: OW sent written comments on OIG’s draft report.
- June 20, 2023: OIG issued and posted the management alert report on their website at www.epa.gov/oig (direct [link here](#)).

Attachment 3. Terminology Used in This Memorandum

EPA wants to ensure the findings within this report and certain grants and appropriations terminology are not confused. Below are terms used throughout this memorandum:

- **Appropriation Act:** A statute, under the jurisdiction of the House and Senate Committees on Appropriations, that generally provides legal authority for federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriation act fulfills the requirement of Article I, Section 9, of the U.S. Constitution, which provides that “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” **Under the rules of both houses, an appropriation act should follow enactment of authorizing legislation.** *A Glossary of Terms Used in the Federal Budget Process*, U.S. Government Accountability Office (GAO), Sept. 1, 2005, at 13, <https://www.gao.gov/assets/gao-05-734sp.pdf> (emphasis added).
- **Authorizing Legislation:** Substantive legislation, proposed by a committee of jurisdiction other than the House or Senate Appropriations Committees, that establishes and continues the operation of a federal program or agency either indefinitely or for a specific period or that sanctions a particular type of obligation or expenditure within a program. This term is used in two different ways: (1) to describe legislation enacting new program authority, that is, authorizing the program, and (2) to describe legislation authorizing an appropriation. Authorization of appropriations legislation authorizes the enactment of appropriations of specific amounts for specific programs and activities to be provided in an appropriation act. In some instances, authorizing legislation may contain an appropriation or provide other forms of budget authority, such as contract authority, borrowing authority, or entitlement authority. *A Glossary of Terms Used in the Federal Budget Process*, U.S. Government Accountability Office (GAO), Sept. 1, 2005, at 15, <https://www.gao.gov/assets/gao-05-734sp.pdf>.
- **Administrative set-aside:** appropriated funds that may be “set aside” by a federal agency for its administration and oversight of a particular program, as authorized by an appropriation.
- **Award:** the amount of federal funds provided by EPA to a grantee for a particular project. 2 CFR 200.1.
- **Project cost:** the total allowable costs incurred under a federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions. 2 CFR 200.1.
- **Cost share:** the portion of project costs not paid by federal funds or contributions (unless otherwise authorized by federal statute). 2 CFR 200.1.
- **Allotment:** the amount of federal grant funding available for an entity to apply for non-competitively, typically based on an allocation formula developed by EPA.
- **Region:** one of ten EPA Regions. 40 CFR Part 1.7.

Attachment 4. Breakdown of How Grant Funds are Spent from Authorization to Appropriation to Award

This attachment breaks down generally how grant program funds are spent from an appropriation through award. Using the SUDC grant as an example, here is a summary of the process:

- Congress authorizes a new grant program. As part of the authorization for the SUDC grant program, Congress allows EPA to use a portion of the funds to administer the program. This is referred to as an administrative set-aside.
- Congress appropriates funds to EPA.
- After the authorized administrative funds are subtracted from the appropriation, the remaining funds are available for grant awards for projects.
- The amount of funding that EPA awards to each state and territory is based on an allocation formula that includes factors for population below the poverty level, small water systems, and underserved communities, including a 10 percent tribal allotment.⁹
- Based on this allocation formula, funds are distributed to the EPA Regions in anticipation of the Regions making grant awards.
- Prior to applying for their allotments, states must submit draft workplans to their respective EPA Region. When reviewing the draft workplans, EPA Regions must be able to determine that activities conform to all applicable requirements of the grant, including cost share as applicable.¹⁰
- States submit final workplans and project applications materials through grants.gov. EPA grants officials review all project application materials, ensure the appropriate cost share and EPA award amount, and then award the EPA portion of the funds to the grant recipient.
- EPA Regions report the total project costs from projects, not just the EPA portion of the award, which EPA makes publicly available on its website. During the duration of the project, the grant recipient is also reporting quarterly to the EPA Region on the progress of their project.¹¹
- Any funds not spent in the FY they are appropriated, become carryover funds that can be spent in future years for the purposes for which they were appropriated. Carryover SUDC funds, as shown in column “b” of Attachment 1, are added to the total amount of funds available the following fiscal year.
- Additional funds for the grant program may be appropriated in the next fiscal year, and those appropriations are combined with carryover, and the cycle begins again.
- EPA uses Compass Data Warehouse to track the funding throughout the process.

⁹ Allotments are publicly available and published on EPA’s website, e.g., for state and territory allotments, see <https://www.epa.gov/dwcapacity/wiin-grant-small-underserved-and-disadvantaged-communities-grant-program-0#historical4>

¹⁰ There is a statutory cost share for the SUDC program, which EPA may reduce or waive. Section 1459A(g)-(h) of SDWA, 42 U.S.C. § 300j-19a(g)-(h). In FY 2018 - FY 2019, the statutory cost share was 45 percent, though the grantee can choose to supply a higher percentage of funds if they wish. In FY 2020, all WIIN 2104 SUDC funds with no cost share was awarded to Indian Health Service, which supported projects in three tribal communities (<https://www.epa.gov/newsreleases/epa-announces-over-15m-indian-health-service-improve-access-drinking-water-tribal>). In FY 2021, the statutory cost share was waived due to the financial constraints caused by the COVID 19 pandemic across the country (https://www.epa.gov/system/files/documents/2022-02/fy21_sudc-rollover-funds-allotment-memo_jan2022.pdf).

¹¹ An award’s terms and conditions guide what to report and include comparisons of which outputs/outcomes defined in the assistance agreement were accomplished during the reporting period, reasons why established outputs/outcomes were not met, and additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high-unit costs.

Attachment 5. Other Areas of Concern EPA Has with the OIG Report

These are additional areas of concern EPA with the OIG report:

- Erroneous characterization of EPA's level of effort: The report cites 65 staff hours were used to collect and compile the requested grant award information; attributing this level of effort solely to the reporting on the grant awards is inaccurate. That estimate of staff hours included a large portion of time that was spent querying, downloading, and transmitting the hundreds of emails the OIG requested related to lead service lines from the SafeWater email hotline, which the OIG did not use in the report in question. OW provided this correction to the OIG in our comments on the OIG's draft report, but the report was not corrected.
- Inaccurate assumption on purpose of grant program: The report repeatedly refers to SUDC grants as being used to replace lead service lines. OW conveyed in past meetings and in written comments to the OIG that not all SUDC grant funding was specifically for lead service line projects. Neither the authorizing statute nor the appropriations acts that funded the SUDC program limited the use of the funds to lead service line replacement projects. Congress authorized the SUDC funding for projects and activities that will help an eligible community meet and comply with SDWA regulations through infrastructure work, technical, managerial, and financial capacity building activities, or activities necessary for a state to respond to a contaminant (see SDWA Section 1459A(b)). The assumption on the OIG's part that 100 percent of funding would support lead-related projects is inaccurate. The OIG never requested EPA to provide information only on lead service line projects that were funded through the SUDC grant program. Instead, the OIG's request to EPA was for project costs for all SUDC grants. Additionally, the report states "EPA could not accurately determine whether WIIN Act funds were distributed to replace lead service lines." EPA would like to clarify that the WIIN Act is not an appropriations act, so it is unclear what "WIIN Act funds" means.
- Inaccurate assumption of timeline of grant program: The report identifies FY 2017 as the base year for SUDC funds (pages 2, 4, Tables 1 and 2, and Figure 2). Congress appropriated funds for the SUDC grant program for the first time in FY 2018.