



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

OFFICE OF
WATER

September 7, 2023

MEMORANDUM

SUBJECT: Award and Implementation of the 2023 State Revolving Fund Supplemental Appropriation for Hurricanes Fiona and Ian (SAHFI)

FROM: Jennifer McLain, Director
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TO: Carmen Guerrero, Caribbean Environmental Protection Division Director
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I. BACKGROUND

On December 29, 2022, the President signed P.L. 117-328, the Consolidated Appropriations Act, 2023, (“the Act”) into law. The funding in Division N of the Act for the Environmental Protection Agency (EPA) includes approximately \$1.1 billion in disaster relief supplemental funding for the State Revolving Fund (SRF) programs: \$665.2 million for the Clean Water State Revolving Fund (CWSRF) programs and \$402 million for the Drinking Water State Revolving Fund (DWSRF) programs, available only to states or territories in EPA Regions 2 and 4 for wastewater treatment works and drinking water facilities impacted by Hurricanes Fiona or Ian. Only the State of Florida and the Commonwealth of Puerto Rico (hereinafter “the states”) are eligible to apply for these DWSRF and CWSRF supplemental funds. Two percent of the appropriated funds are reserved for direct grants or interagency agreements to benefit Tribes. The Act gives EPA the authority to retain up to \$1 million of the funds from this appropriation for management and oversight.

For ease of reference, EPA will refer to this supplemental appropriation as the SAHFI (Supplemental Appropriation for Hurricanes Fiona and Ian).

This memorandum describes how EPA will award and administer SAHFI capitalization grants to the eligible states. Nothing in this document is meant to conflict with or supersede the 2023 Consolidated

Appropriations Act, Office of Management and Budget Guidance, or any capitalization grant terms and conditions.

Funds will remain available for obligation to the states for the fiscal year in which they are appropriated and the following fiscal year, per the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA).¹ Therefore, the states must apply for and receive SAHFI capitalization grant award(s) from EPA by the end of fiscal year 2024 (September 30, 2024). The states must make commitments (i.e., they must sign assistance agreements, such as loans, with eligible recipients) within one year after the receipt of each capitalization grant payment from EPA.² Once EPA obligates the capitalization grants to the states, the funds will be available to the states pursuant to grant regulations.

For projects to be eligible under the SAHFI, they must be SRF eligible and have the purpose of reducing flood or fire damage risk and vulnerability or enhancing resiliency to rapid hydrologic change or natural disaster. EPA has tools available to assist communities and states in achieving these goals. EPA's free [Water Technical Assistance \(WaterTA\)](#) programs and resources can support communities in identifying water infrastructure challenges, developing plans, and applying for federal funding. EPA also has practical tools, training, and technical assistance to increase resilience to climate change available through the [Creating Resilient Water Utilities \(CRWU\)](#) initiative.

States administer the funds through the existing SRF programs. SRF requirements and procedures apply to these supplemental funds. General SRF program information is located at www.epa.gov/cwsrf and www.epa.gov/dwsrf. Local drinking water and wastewater systems (and other eligible assistance recipients) apply for SAHFI SRF funding directly through their state [CWSRF](#) and [DWSRF](#) programs. Local leaders should direct questions about applications and state program eligibilities to their state SRF managers.

II. APPLICATION REQUIREMENTS FOR SAHFI CAPITALIZATION GRANT FUNDS

EPA recommends that the states submit capitalization grant applications as soon as possible through www.grants.gov. The states must submit an Intended Use Plan (IUP) and Project Priority List (PPL) for the SAHFI funding. The IUPs and PPLs must meet existing SRF requirements. Because of the SAHFI's appropriation is for particular purposes, and to be consistent with existing grants regulations and reporting requirements, the states must submit separate grant application(s) for the SAHFI appropriation and other SRF capitalization grant applications in grants.gov. Each state must receive its SAHFI grant award by the end of fiscal year 2024 (September 30, 2024) or the funds will be reallocated.³

To accelerate SAHFI grant awards, EPA will allow Florida and Puerto Rico to apply for conditional and partial grants based on draft IUPs. 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

¹ 33 U.S.C. § 1384(c)(1); 42 U.S.C. § 300j-12(a)(1)(C).

² 33 U.S.C. § 1382(b)(3); 40 CFR § 35.3550(e)(1).

³ 33 U.S.C. § 1384(c)(2); 42 U.S.C. § 300j-12(a)(1)(E).

obligate the full amount of the award placing appropriate drawdown/payment restrictions for the portion of the work plan not yet approved. This does not prohibit work from beginning on approved activities. All activities must meet state and federal SRF regulations. The states may also apply to 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 SAHFI. The EPA will only make a partial award to the state for an amount equal to the total cost of the project list. In the case of a partial award, the state could later amend its grant award to include the remaining funding so long as it is awarded by September 30, 2024. An amended IUP including projects in an amount equal to the remaining funds available to the state under SAHFI must be submitted by the state to EPA before the grant is amended to award the remaining funds. This includes a revised grant application package through grants.gov.

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

A. INTENDED USE PLAN

The CWA section 606(c) and the SDWA section 1452(b) require states to prepare a plan identifying the intended uses of the funds in the SRF and describing how those uses support SRF goals. States must submit supplemental IUPs specific to the SAHFI funding. Projects can be co-funded with other SRF capitalization grants (e.g., base funds, Bipartisan Infrastructure Law (BIL) general supplemental funds), and an existing IUP for the CWSRF or the DWSRF may be amended to reflect this new funding source. A supplemental IUP meeting all SRF requirements in Title VI of the CWA and accompanying regulations, or in SDWA section 1452 and accompanying regulations, as appropriate, will be required for approval of a grant award and release of funds. An IUP must contain the following:

1. List of Projects: Under CWA section 606(c)(1), the IUP must contain a list of publicly owned treatment works projects on the state's PPL, developed pursuant to section 216 of the CWA, that are eligible for SRF construction assistance. The IUP must also contain a list of the non-point source and national estuary protection activities under sections 319 and 320 of the CWA that the state expects to fund from its SRF. The list must contain eligible projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for before a grant can be awarded.

SDWA section 1452(b)(3)(B), requires state IUPs to include a list of projects that are eligible for assistance under SDWA section 1452 and are to be assisted pursuant to the plan (i.e., a PPL). This list must include: the name of the public water system, a description of the project, the priority assigned to the project, the expected terms of financial assistance, and the size of the community served. The IUP must contain a fundable list of projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for. The IUP must also contain a comprehensive list of projects that may receive DWSRF assistance in the future. A state may combine the fundable and comprehensive lists into one list provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

Projects funded by SAHFI are subject to the eligibility requirements described in section III below.

2. Additional Elements: Both the CWSRF and DWSRF IUPs must contain proposed assistance terms including interest rates, the short-term and long-term goals of the SRF, and a description of how the state will choose projects consistent with the purposes of the SAHFI. The IUP must contain a description of the intended uses of the additional subsidization allowance described in section III.E. below. For the DWSRF, the IUP must describe set-aside funds to be taken, if any, and how those are consistent with the purposes of the SAHFI.

3. Transfers: States choosing to transfer funds between either of the CWSRF and DWSRF capitalization grants received under the SAHFI must state their intention in their IUP. Any transfers are subject to the statutory limits of the SRFs.⁴ Additionally, for SAHFI capitalization grants, any transfer will be subject to the SAHFI requirements as outlined in this memorandum.

4. Public Review and Comment: The IUP must contain a statement of how the state met the requirement of CWA section 606(c) or SDWA section 1452(b)(1) for public review and comment on the preparation of the IUP. When seeking public review, states should include a diverse set of potential interested parties, including community groups, neighborhood associations, environmental organizations, environmental justice organizations, and public health groups, that represent a broad spectrum of community interests and extend beyond those on existing mailing lists and traditional participants in the SRF process. In addition, states should strive to achieve the following objectives when seeking public review: (1) assure that the public has the opportunity to understand official programs and proposed actions, and that the state fully considers the public's concerns; (2) assure that the state does not make any significant decision on any SRF activity without consulting interested and affected segments of the public; (3) assure that the state action is as responsive as possible to public concerns; (4) encourage public involvement in implementing the SRFs; (5) keep the public informed about significant issues and proposed project or program changes as they arise; (6) foster a spirit of openness and mutual trust between the state and the public; and (7) use all feasible means to create opportunities for public participation, and to stimulate and support public participation. States should make a particular effort to identify and engage organizations that work in disadvantaged communities and Tribes. EPA will review IUPs with particular focus on whether the state has meaningfully engaged an inclusive spectrum of community interests.

5. Draft IUPs for Purpose of Conditional Grants: Some states may complete a supplemental IUP but require additional time to complete public review or approval by boards or state governments. The Agency may award conditional grants to facilitate expeditious use of funds upon final public review and/or approval. To receive a conditional grant, a draft IUP must be ready for public review and/or consideration by agency/state government bodies and include the information described above in sections II.A.1 and 2. Conditional awards will contain a grant condition stating that funds may not be drawn until an IUP has completed the review process

⁴ 42 U.S.C. § 300j-12 note.

and is approved by the Region. States must submit an IUP that has completed the public review process and received EPA approval before funds may be drawn.

6. IUPs for Purpose of Partial Grants: States with a project list less than the amount of funds they are eligible to receive under the SAHFI may apply for a partial award. The IUP for a partial award must include the information described above in sections II.A.1, 2, and 3.⁵ EPA will only make a partial award for an amount equal to the total cost of the project list. An amended IUP including projects in an amount equal to the remaining funds available to the states under SAHFI must be submitted by the state to EPA before the grant is amended to award the remaining funds. This includes a revised grant application package through grants.gov. Certain requirements (e.g., additional subsidization and green project reserve) are calculated based on a percentage of the capitalization grant *awarded*. Per statute, states may not apply exclusively for the set-asides or the additional subsidization portion of the capitalization grant.

B. OTHER APPLICATION COMPONENTS

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

III. SUMMARY OF SAHFI PROVISIONS

All statutory requirements for the SRFs (e.g., Davis-Bacon, American Iron and Steel), as well as guidance or regulations issued by EPA for the implementation of the CWSRF and DWSRF programs apply unless they are inconsistent with the SAHFI, the capitalization grant conditions, or the requirements contained in this document. Below are the SAHFI-specific implementation elements:

- A. Funding Amount:** Congress appropriated \$1.067 billion for SAHFI. Per the Act's authority, EPA will retain \$1 million of this appropriation for management and oversight. EPA set aside \$13.3 million for CW projects and \$8 million for DW projects (i.e., two percent of funds

⁵ The amount of the total DWSRF capitalization grant, including any portion awarded for set-aside activities, determines the amount of funds that can be reserved and transferred. Funds may be transferred between the CWSRF and DWSRF on a net basis, as long as the statutory 33% ceiling is not breached. For more details on inter-SRF transfers, see the [SRF Transfer Policy](#).

appropriated) for grants to Tribes per the FY 2023 Consolidated Appropriations Act.⁶ The remaining \$1.045 billion is available for additional capitalization grants to the eligible states pursuant to Title VI of the CWA and SDWA section 1452: \$651.3 million to CWSRF and \$393.6 million to the DWSRF.

B. Eligible Recipients: The SAHFI contains the following provision:

Provided, That notwithstanding section 604(a) of the Federal Water Pollution Control Act and section 1452(a)(1)(D) of the Safe Drinking Water Act, funds appropriated under this paragraph in the Act shall be provided to States or Territories in EPA Regions 2 and 4 in amounts determined by the Administrator for wastewater treatment works and drinking water facilities impacted by Hurricanes Fiona and Ian...

Unlike typical appropriations, for the SAHFI, Congress specifically exempted EPA from using the SRF allotment formulas in the CWA and SDWA. Furthermore, the SAHFI funds are restricted to those states in Regions 2 and 4, with wastewater and drinking water treatment works and facilities impacted by the named disasters. For the two eligible states, EPA determined that the funds will be allotted in proportion to the needs estimates submitted by those states. A chart containing specific allotment amounts is in Attachment 1.

An eligible entity is any otherwise SRF-eligible entity within an eligible state that was damaged, demonstrates impact, or had a loss or disruption of a mission-essential function, including loss of function where there was potential impact to public health, caused by the listed natural disasters.

C. Eligible Use of Funds: The SAFHI contains the following provision:

Provided further, That the funds appropriated under this paragraph in this Act shall be used for eligible projects whose purpose is to reduce flood or fire damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or natural disaster at treatment works as defined by section 212 of the Federal Water Pollution Control Act or any eligible facilities under section 1452 of the Safe Drinking Water Act, and for other eligible tasks at such treatment works or facilities necessary to further such purposes...

This provision defines the scope of eligible activities authorized under the SAHFI by restricting the eligible uses of both the CWSRF and DWSRF program funds. For an activity to be eligible under the SAHFI, it must be otherwise SRF eligible *and* serve one or more of the following purposes:

- Reduce flood or fire damage risk and vulnerability at treatment works as defined by section 212 of the CWA or any eligible facilities under section 1452 of the SDWA

⁶ FY 2023 Consolidated Appropriations Act, P.L. 117-328, Division G, Title II (providing that for FY 2023 EPA may retain up to a total of 2% of CWSRF funds appropriated, or \$30 million, whichever is greater, and up to a total of 2% of DWSRF funds appropriated, or \$20 million, whichever is greater, to provide grants funding to Tribes).

- Enhance resiliency to rapid hydrologic change or natural disaster at treatment works as defined by section 212 of the CWA or any eligible facilities under section 1452 of the SDWA

See a detailed example list of eligible activities in Attachment 2. If a state wishes to fund an activity *not* listed in Attachment 2, the state must explain in its IUP how the proposed project addresses the aforementioned purposes.

D. Disadvantaged Communities and Tribes: The SAFHI contains the following provision:

“Provided further, That States or Territories shall prioritize funds, as appropriate, to Tribes and disadvantaged communities...”

Tribes and disadvantaged communities experience, or are at risk of experiencing, disproportionately high exposure to pollution – whether in air, land, or water. The SAFHI directs states to prioritize projects that benefit Tribes and disadvantaged communities, as appropriate, to help ensure these communities benefit from this supplemental disaster funding.

In accordance with this provision, for SAHFI CWSRF funding, EPA expects states to prioritize Tribes and/or municipalities that meet the states’ affordability criteria as defined under CWA section 603(i). This can include municipalities that do not meet the state’s affordability criteria but seek to benefit disadvantaged ratepayers in the residential user rate class. If assistance is being used to benefit individual ratepayers in the residential user rate class of a municipality that does not meet the affordability criteria, then the recipient must demonstrate to the state’s satisfaction that these ratepayers would otherwise experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is being sought. Additionally, the CWSRF assistance agreement between the state and the recipient must include language indicating that the additional subsidization would be provided to these ratepayers through a user charge rate system or other appropriate method and the burden of documentation and verification is on the recipient. State project files should house copies of the verification.

In accordance with this provision, for SAHFI DWSRF funding, EPA expects states to prioritize Tribes and/or disadvantaged communities. Section 1452(d)(3) of SDWA requires states to establish a definition of disadvantaged communities.

The CWSRF and DWSRF intended use plans must provide a detailed description of the states’ efforts to prioritize Tribes and/or disadvantaged communities, as appropriate. The description must also include the rationale for providing disaster supplemental funding to non-disadvantaged communities.

Finally, the states should consult the [Bipartisan Infrastructure Law SRF Memorandum](#) for additional guidance and tools on how best this funding can be directed to Tribes and disadvantaged communities.

E. Additional Subsidization: The SAFHI contains the following provision:

Provided further, That notwithstanding the requirements of section 603(i) of the Federal Water Pollution Control Act and section 1452(d) of the Safe Drinking Water Act, for the funds appropriated under this paragraph in this Act, each State shall use 100 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants, or any combination of these...

Each state must use 100 percent of its capitalization grant (for the DWSRF, net of any DWSRF set-asides taken) for the above purposes.

Eligible Forms of Additional Subsidy:

- a. *Principal Forgiveness*: The principal forgiveness amount must be included in the loan agreement for the amount forgiven to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the amount of principal forgiven.
- 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 to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the difference between the principal of the loan and the total payments expected over the life of the loan.
- c. *Grants*: The grant must be provided at the time of assistance agreement execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the total grant amount included in the agreement. Note that grant recipients under this provision are considered “subgrantees” for the purposes of EPA’s grant regulations as detailed below in section IV.D.

F. State Match: The SAFHI contains the following provisions:

Provided further, That the funds provided under this paragraph in this Act shall not be subject to the matching or cost share requirements of section 1452(e) of the Safe Drinking Water Act: *Provided further*, That funds provided under this paragraph in this Act shall not be subject to the matching or cost share requirements of sections 602(b)(2), 602(b)(3), or 202 of the Federal Water Pollution Control Act...

This language waives the requirements in sections 602(b)(2), 602(b)(3), and 202 of the CWA as well as section 1452(e) of the SDWA for states to provide match for the SAHFI capitalization grants.

G. DWSRF Administration and Other Set-Aside Funds: At their discretion, states may take set-asides from the SAHFI capitalization grant. The set-asides must be used to support the purposes

of SAHFI: to support the reduction of flood or fire damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or natural disasters at treatment works or water systems.

Example activities include, but are not limited to:

- a. Using the DWSRF Administration and Technical Assistance set-aside under section 1452(g)(2)(A) of SDWA (the greatest of 4 percent, \$400,000, or 1/5th percent of the current valuation of the fund) to fund salaries of employees working on SAHFI, based upon the amount of time spent on SAHFI implementation, and to provide resiliency-related technical assistance to water systems impacted by Hurricanes Ian and Fiona.
- b. Using the DWSRF's 2 percent Small System Technical Assistance set-aside under section 1452(g)(2)(C) of SDWA to provide resiliency-related technical assistance to small water systems impacted by Hurricanes Fiona and Ian.

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

States may use up to an amount equal to 2% of the SAHFI CWSRF capitalization grant for the purpose of hiring staff, nonprofit organizations, or regional, interstate, or municipal entities to assist rural, small, and tribal publicly owned treatment works. The form of that assistance is flexible and could include, but is not limited to, community outreach, technical evaluation of wastewater solutions, preparation of applications, preliminary engineering reports, and financial documents necessary for receiving SRF assistance.

IV. OTHER APPLICABLE PROVISIONS

- A. Equivalency:** SAHFI funds are federal funds and therefore equivalency requirements apply to projects funded by SAHFI capitalization grant(s).⁷ Projects funded through the base or other SRF programs cannot be used to meet the equivalency requirements of the SAHFI capitalization grants.
- B. Reporting:** Transparency and consistency are of the utmost importance to ensure that the funds are being used effectively and efficiently. States must use EPA's SRF Data System to report key SAHFI project characteristics and milestone information no less than quarterly EPA recommends that project data be entered into the reporting systems as soon as agreements are

⁷ The Build America, Buy America (BABA) Act requirements do not apply to SAHFI funding. See section IV.F. Build America, Buy America for more information.

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 SRF programs to report on recipients that received federal dollars in the FFATA Subaward Reporting System (www.fsr.gov). FFATA reporting must exactly equal the capitalization grant amount.

C. Cash Draws: Disbursements for projects funded by SAHFI must *not* be drawn from other open SRF capitalization grants unless the projects are jointly funded by the SAHFI and other SRF funding sources. Funds must be expended in a timely and expeditious manner.

D. Laws, Regulations, and Requirements for Assistance Agreements in the Form of Grants: The SAHFI allows state CWSRF and DWSRF programs to provide grants to eligible assistance recipients. States should be aware that SRF assistance recipients that receive a grant are legally considered “subrecipients” for the purposes of Office of Management and Budget’s (OMB’s) grant regulations at 2 CFR Part 200 et. seq. In other words, assistance recipients receiving additional subsidization in the form of a grant are subject to additional cross-cutting federal requirements than those receiving other forms of additional subsidization. EPA’s subaward policy establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 CFR 200.331, 200.332, and 200.333, respectively.

Note that the use of a grant as an additional subsidization instrument does not change the established CWSRF and DWSRF cash draw rules. The assistance recipient must first incur a cost associated with an executed assistance agreement for the state CWSRF and DWSRF to have the authority to draw capitalization grant funds from the Department of the Treasury and disburse those funds to the assistance recipient.

E. Federal Civil Rights Responsibilities, Including Title VI of the Civil Rights Act of 1964 In 1994, [Executive Order 12898](#)⁸ was issued to direct Federal agencies to incorporate achieving environmental justice into their mission. The Presidential Memorandum⁹ accompanying that Executive Order required in part, that consistent with Title VI of the Civil Rights Act of 1964, each Federal agency “...ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”¹⁰

⁸ Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994.

⁹ Presidential Memorandum on Executive Order for Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, available at: https://www.epa.gov/sites/default/files/2015-02/documents/clinton_memo_12898.pdf.

¹⁰ Id.

EPA has a responsibility to ensure that recipients and subrecipients of federal financial assistance from EPA comply with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin (including limited English proficiency), disability, sex and age, including Title VI of the Civil Rights Act of 1964.¹¹

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

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

EPA's nondiscrimination regulations at 40 C.F.R. Parts 5 and 7 also contain longstanding procedural requirements applicable to applicants for and recipients (including sub-recipients) of EPA financial assistance.¹² These requirements include having a notice of nondiscrimination, nondiscrimination coordinator, grievance procedures, a process for collecting and maintaining nondiscrimination compliance information, and pursuant to Title VI and the Rehabilitation Act of 1973, developing policies and procedures for ensuring meaningful access to programs and activities for individuals with limited-English proficiency and individuals with disabilities. In addition, recipients' public participation processes must also be implemented consistent with the federal civil rights laws.¹³

¹¹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) et seq. (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., 29 U.S.C. § 794, Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92 500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 CFR. Parts 5 and 7.

¹² EPA's nondiscrimination regulation at 40 CFR Parts 5 and 7 requires recipients to establish and implement their own nondiscrimination programs. *See* 40 CFR §§ 7.80-7.100.

¹³ *See* Title VI, 42 U.S.C. §§ 2000(d) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 CFR § 7.35(a). *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance

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

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

- F. **Build America, Buy America:** The Build America, Buy America (BABA) Act requirements do not apply to SAHFI funding pursuant to the exception under section 70912(4)(B), which states that BABA does not apply to “expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 16 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.” Per the OMB’s April 18, 2022 memorandum M-22-11 “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,” “pre and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are (1) authorized by statutes other than the Stafford Act, 42 U.S.C. §§ 5121 et seq., and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, id. § 5122(1),(2).¹⁴

V. EPA Oversight

As BIL and supplemental appropriations are awarded, EPA plans to amend its annual review guidance and checklists, as needed, to address any updates. This ensures that the SRF programs are successfully meeting critical programmatic and fiduciary oversight responsibilities.

for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, [Procedural Safeguards Checklist for Recipients](https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf), at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf (2017).

¹⁴ President Biden issued an emergency declaration under the Stafford Act for the Commonwealth of Puerto Rico due to the emergency conditions resulting from Tropical Storm/Hurricane Fiona on September 21, 2022. President Biden issued an emergency declaration under the Stafford Act due to emergency conditions resulting from Hurricane Ian for the State of Florida on September 25, 2022, and for the Seminole Tribe of Florida on September 30, 2022.

VI. Conclusion

Please provide this memorandum to the states prior to grant award to ensure that the applicant is aware of the applicable statutory requirements before the grant is awarded. Additionally, continue discussions with the states on their plans to implement the SAHFI, including how they will prioritize Tribes and/or disadvantaged communities.

You may contact us with questions or have your staff contact Mark Mylin in the CWSRF program at Mylin.Mark@epa.gov or Bizzy Berg in the DWSRF program at Berg.Bizzy@epa.gov.

ATTACHMENT 1
SAHFI SRF DRAFT Allotments

Distribution of Clean Water & Drinking Water SRF Appropriation from "Consolidated Appropriations Act, 2023" Supplemental Appropriation for Hurricanes Fiona and Ian (SAHFI)		
Based on Appropriation of		\$1,067,210,000
State	CWSRF	DWSRF
Florida¹⁵	\$ 317,415,000	\$ 171,295,000
Puerto Rico¹⁶	\$ 333,868,000	\$ 222,288,000
Total Funds Available to States & Territories		\$ 1,044,866,000
National Set-Asides		
CWSRF Tribal Set Aside	\$ 13,304,000	
DWSRF Tribal Set Aside	\$ 8,040,000	
National Administrative Set Aside	\$ 1,000,000	
Total SRF Appropriation		\$ 1,067,210,000

¹⁵ Estimates of damage from <https://www.floridahealth.gov/environmental-health/drinking-water/boil-water-notices/index.html>

¹⁶ Estimates of damage from <https://www.preps.pr.gov/>.

ATTACHMENT 2

Projects Eligible under the SAHFI

Clean Water SRF

If a project is not specifically listed below, states must explain in their IUP how the project addresses the purposes outlined in section III.C. of this memorandum.

- I. Projects that prevent interruption of collection system operation in the event of a flood or natural disaster, including but not limited to:**
 - a. Installation of back-up generators (including portable generators) or alternative energy sources (e.g., solar panels, wind turbines, batteries, switch boxes) that service pump stations or other distribution system facilities
 - b. Replacement of damaged equipment with more energy efficient equipment
 - c. Physical “hardening” or waterproofing of pumps and electrical equipment at pump stations and other components of collection systems (including storage facilities and associated equipment) through upgrade or replacement, including:
 - Installation of submersible pumps
 - Waterproofing electrical components (e.g., pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g., wind resistant roofing materials, wind-damage resistant windows, storm shutters)
 - d. Relocation of pump stations or other collection system facilities to less flood prone areas
 - e. Installation of physical barriers around pump stations or other collection system facilities (e.g., levees or dykes)
 - f. Correction of significant infiltration and inflow problems that increase the likelihood of sewer backups or flooding of a treatment works
 - g. Separation of combined sewers that will result in a reduced risk of flooding of the collections system and/or treatment works
 - h. Installation/construction of redundant collection system components and equipment
 - i. Regionalization project that enables diversion of wastewater flows to an alternate system for emergency wastewater collection and treatment services
 - j. SCADA system projects to allow remote or multiple system operation locations
Construction or installation of flood attenuation, diversion, and retention infrastructure within or beyond the boundaries of a treatment works that protects the collection system
 - k. Green infrastructure that reduces flood risk by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g., constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - l. Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees

- Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure
- II. Projects that prevent floodwaters from entering a treatment works, including but not limited to:**
- a. Installation of physical barriers around a facility (e.g., levees or dykes around the facility to prevent flooding)
 - b. Relocation of facilities to less flood prone areas
 - c. Construction or installation of flood attenuation, diversion, and retention infrastructure within or beyond the boundaries of a treatment works that protects the treatment works
 - d. Green infrastructure that reduces the risk of flooding by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g., constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - e. Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure
- III. Projects that maintain the operation of a treatment works and the integrity of the treatment train in the event of a flood or natural disaster, including but not limited to:**
- a. Installation of back-up generators (including portable generators) or alternative energy sources (e.g., solar panels, wind turbines, batteries, switch boxes) that service pump stations or other distribution system facilities
 - b. Replacement of damaged equipment with more energy efficient equipment
 - c. Physical “hardening” or waterproofing of pumps and electrical equipment at treatment works through upgrade or replacement, including:
 - Installation of submersible pumps
 - Waterproofing electrical components (e.g., pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g., wind resistant roofing materials, wind-damage resistant windows, storm shutters)
 - d. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structures
 - e. Installation of physical barriers around individual treatment processes
 - Flood walls around treatment tanks
 - Elevated walls or capping of treatment tanks
 - f. Installation of larger capacity storage tanks
 - Installation of larger capacity chemical storage tanks for continued treatment in absence of delivery service
 - Installation of larger capacity fuel storage tanks for back-up generators

- Construction of storage tanks at treatment works to store overflows for future treatment
 - g. Installation/construction of redundant components and equipment
 - h. SCADA system projects to allow remote or multiple system operation locations
- IV. Projects that preserve and protect treatment works equipment in the event of a flood or natural disaster, including but not limited to:**
- a. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structures
 - b. Prevention of saltwater damage to materials and equipment
 - Installation of salt water resistant chemical storage tanks
 - Installation of salt water resistant fuel storage tanks
 - Installation of salt water resistant equipment and appurtenances
- V. Planning projects that assess a treatment works' vulnerability to flood damage or that analyze the best approach to integrate system and community sustainability/resiliency priorities in the face of a variety of uncertain futures including natural disasters and more frequent and intense extreme weather events, provided the planning work is reasonably expected to result in a capital project, including but not limited to:**
- a. Risk/vulnerability assessments considering recent floodplain maps and projected sea level rise
 - b. Alternatives analysis
 - c. Asset Management Plans
 - d. Emergency Preparedness, Response, and Recovery Plans

Drinking Water SRF

If a project is not specifically listed below, states must explain in their IUP how the project addresses the purposes outlined in section III.C. of this memorandum.

- I. Projects that prevent interruption of water distribution system operation in the event of a flood or natural disaster, including but not limited to:**
 - a. Installation of back-up generators (including portable generators) or alternative energy sources (e.g., solar panels, wind turbines, batteries, switch boxes) that service pump stations or other distribution system facilities
 - b. Purchase of mobile laboratory equipment for use during emergencies
 - c. Replacement of damaged equipment with more energy efficient equipment
 - d. Physical “hardening” or waterproofing of pumps and electrical equipment at pump stations and other components of distribution systems (including storage facilities and associated equipment) through upgrade or replacement, including:
 - Waterproofing electrical components (e.g., pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g., wind resistant roofing materials, wind-damage-resistant windows, storm shutters)
 - e. Relocation of pump stations or other distribution system facilities to less flood prone areas
 - f. Installation of physical barriers around pump stations or other distribution system facilities (e.g., levees or dykes)
 - g. Installation/construction of redundant distribution system components and equipment
 - h. Construction of interconnections with neighboring water systems which could provide an emergency water supply
 - i. SCADA system projects to allow remote or multiple system operation locations
 - j. Construction or installation of flood attenuation, diversion, and retention infrastructure associated with an otherwise eligible drinking water project that protects the distribution system
 - k. Green infrastructure that reduces the risk of flooding by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g., constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - l. Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure
- II. Projects that prevent floodwaters from entering a treatment plant or well house, including but not limited to:**
 - a. Installation of physical barriers around a facility (e.g., levees or dykes around the facility to prevent flooding)
 - b. Relocation of facilities to less flood prone areas

- c. Construction or installation of flood attenuation, diversion, and retention infrastructure associated with an otherwise eligible drinking water project that protects the treatment plant
- d. Green infrastructure that reduces the risk of flooding by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g., constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
- e. Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure

III. Projects that maintain the operation of a drinking water treatment plant, intake or well in the event of a flood or natural disaster, including but not limited to:

- a. Installation of back-up energy supply or alternative energy sources (e.g., solar panels, wind turbines, batteries, switch boxes) and/or hardening of existing connections to the power grid
- b. Replacement of damaged equipment with more energy efficient equipment
- c. Physical “hardening” or waterproofing of pumps and electrical equipment at pump stations and other components of distribution systems (including storage facilities and associated equipment) through upgrade or replacement, including:
 - Waterproofing electrical components (e.g., pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g., wind resistant roofing materials, wind-damage-resistant windows, storm shutters)
- d. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structures
- e. Installation of physical barriers around individual treatment processes
 - Flood walls around treatment tanks
 - Elevated walls or capping of treatment tanks (e.g., tanks, vaults)
- f. Installation of larger capacity storage tanks
 - Installation of larger capacity chemical storage tanks for continued treatment in absence of delivery service
 - Installation of larger capacity fuel storage tanks for back-up generators
 - Installation of larger capacity water storage facilities (e.g., raw water reservoirs, backwash tanks, contact basins)
- g. Installation/construction of redundant distribution system components and equipment
- h. SCADA system projects to allow remote or multiple system operation locations

IV. Projects that preserve and protect water system equipment in the event of a flood or natural disaster, including but not limited to:

- a. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structure
- b. Prevention of saltwater damage to materials and equipment

- Installation of salt water resistant chemical storage tanks
 - Installation of salt water resistant fuel storage tanks
 - Installation of salt water resistant equipment and appurtenances
- V. **Planning projects that assess a treatment works' vulnerability to flood damage or that analyze the best approach to integrate system and community sustainability/resiliency priorities in the face of a variety of uncertain futures including natural disasters and more frequent and intense extreme weather events, provided the planning work is reasonably expected to result in a capital project, including but not limited to:**
- a. Risk/vulnerability assessments considering recent floodplain maps and projected sea level rise
 - b. Alternatives analysis
 - c. Asset Management Plans
 - d. Emergency Preparedness, Response, and Recovery Plans