

## **Bipartisan Infrastructure Law: State Revolving Funds Implementation Memorandum March 2022**

President Biden signed the Bipartisan Infrastructure Law (BIL) on November 15, 2021. The law's investment in the water sector is nothing short of transformational. It includes \$50 billion to the Environmental Protection Agency (EPA) to strengthen the nation's drinking water and wastewater systems—the single largest investment in clean water that the federal government has ever made. A significant portion of water infrastructure dollars will flow through the Clean Water and Drinking Water State Revolving Funds (SRFs), which represent a partnership between the Agency, states, tribes, territories, and local communities. EPA is committed to maximizing the impact of these funds in addressing urgent water challenges facing communities.

EPA's implementation memorandum provides information and guidelines on how EPA will administer the SRF capitalization grants appropriated to states under the law. The implementation memorandum is expected to be applicable to all five years of BIL appropriations.

### **Provide Flexibility to Meet Local Water Needs**

A fundamental principle of the SRFs is the flexibility provided to states and borrowers to address a wide variety of local water quality and public health challenges. EPA continues to support and actively encourages flexibility in the implementation of SRF funding included in the BIL. With supplemental funding to the CWSRF and DWSRF—and creation of dedicated funding within the SRFs to tackle lead and emerging contaminants—states will have a great deal of flexibility in program administration.

### **Increase Investment in Disadvantaged Communities**

A key priority of the Bipartisan Infrastructure Law is to ensure that disadvantaged communities benefit equitably from this historic investment in water infrastructure. Disadvantaged communities can include those with environmental justice concerns that often are low-income and communities of color. Disadvantaged communities experience, or are at risk of experiencing, disproportionately high exposure to pollution—whether in air, land, or water.

The Bipartisan Infrastructure Law mandates that 49 percent of funds provided through the DWSRF General Supplemental Funding and the DWSRF Lead Service Line Replacement Funding must be provided as grants and forgivable loans to disadvantaged communities. The BIL also requires that at least 25 percent of funds provided through the DWSRF Emerging Contaminants Funding be provided as grants and forgivable loans to disadvantaged communities or public water systems serving fewer than 25,000 people. For the CWSRF, the law mandates that 49 percent of funds provided through the CWSRF General Supplemental Funding must be provided as grants and forgivable loans to communities that meet the state's affordability criteria or certain project types, consistent with the Clean Water Act. To accomplish this, states may need to:

- Evaluate and revise, as needed, the DWSRF disadvantaged community definition and CWSRF affordability criteria.
- Evaluate the SRF priority point system for project ranking commensurate with need.
- Use technical assistance funding to help disadvantaged communities identify needs and access funding.
- Engage residents and community stakeholders in disadvantaged communities.

EPA will collaborate with state SRF programs to share models, examples, and build state capacity to target resources to disadvantaged communities.

### **Make Rapid Progress on Lead Service Line Replacement**

The BIL contains a historic \$15 billion in dedicated funding through the DWSRF for lead service line (LSL) identification and replacement. This funding is being provided to states with no match requirement. EPA will collaborate with state SRF programs to share models, guidance, and build state capacity to assist local communities and ensure lead service line funding is effectively and equitably deployed. DWSRF supplemental funding and base funding can be used for LSL identification and replacement. The implementation memorandum provides examples of eligible projects. Any project funded under this appropriation must replace the entire LSL, not just a portion, unless a portion has already been replaced.

### **Address PFAS and Emerging Contaminants**

The BIL provides \$5 billion through the SRFs to reduce people's exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through their drinking water and to help address discharges through wastewater and, potentially, nonpoint sources. By law, these funds must be distributed to communities entirely as forgivable loans or grants. States are not required to provide matching funds. This demonstrates an unprecedented commitment from Congress to addressing PFAS water contamination across the nation. The implementation memorandum provides a description of emerging contaminants for the SRF programs to use in evaluating project eligibility.

### **Support Resilience and One Water Innovation**

One of the defining features of the State Revolving Funds is the broad range of eligible projects that states can fund to flexibly support priority needs. EPA encourages states to utilize the significant increase in SRF funding for infrastructure projects that make water systems more resilient to all threats—whether it is natural disasters, climate change, or threats such as bioterrorism and cyber-attacks.

### **Support American Workers and Renew the Water Workforce**

The Bipartisan Infrastructure Law is not only an opportunity to reinvest in America's water infrastructure, it is an opportunity to invest in the American worker. SRF projects are protected by Davis-Bacon prevailing wage requirements, consistent with federal law. BIL investments will create jobs in construction, operations and maintenance, and other family-supporting careers—at a pivotal moment when more than one-third of the water workforce will retire in the next five years. As it implements BIL, EPA is committed to working with states, tribes, and territories—as well as labor organizations, employers, and educators—to renew America's water workforce and create good-paying jobs in communities across America.

### **Cultivate Domestic Manufacturing**

Acting in a bipartisan fashion, Congress passed the Build America Buy America (BABA) Act in 2021, concurrently with the Bipartisan Infrastructure Law. Congress established this domestic preference program to create long-term opportunities for domestic manufacturers and manufacturing jobs and build resilient domestic supply chains for a wide range of products. BABA expands existing American Iron and Steel (AIS) requirements for SRF recipients to include additional materials and manufactured goods. In the coming weeks, EPA plans to issue implementation procedures for BABA compliance for federal water infrastructure funding programs. EPA will work closely with states, tribes, and territories on technical assistance and training.

## Fully Enforce Civil Rights

Under Title VI of the Civil Rights Act, EPA has a responsibility to ensure that federal funds are not being used to subsidize discrimination based on race, color, or national origin. EPA’s nondiscrimination regulations prohibit recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin, age, disability, or sex. EPA intends to carefully evaluate the implementation of SRF funding under the BIL to ensure compliance with civil rights laws.

## Refine State SRFs to Build the Pipeline of Projects

EPA encourages states to strategically use funds from the Bipartisan Infrastructure Law as a catalyst to continue building and maintaining a robust project pipeline of SRF projects. EPA recommends states use practices already exemplified in some SRF programs, such as simplifying and streamlining their application process, using set-asides and technical assistance to build capacity in small and disadvantaged systems, encouraging integrated and regional approaches, and increasing internal and external outreach about the new funding opportunities through the SRF programs.

## BIL SRF Funding Details

| SRF Funding Program                  | Total Funding    | State Match        | Additional Subsidy | Eligible for Additional Subsidy  |
|--------------------------------------|------------------|--------------------|--------------------|--|
| Clean Water SRF Supplemental         | \$11,713,000,000 | 10% in 2022 & 2023 | 49%                | Assistance recipients that meet the state’s affordability criteria or project types as described in section 603(i) of the CWA. |
|                                      |                  | 20% in 2024 - 2026 |                    |  |
| Drinking Water SRF Supplemental      | \$11,713,000,000 | 10% in 2022 & 2023 | 49%                | Disadvantaged Communities  |
|                                      |                  | 20% in 2024 - 2026 |                    |  |
| Clean Water Emerging Contaminants    | \$1,000,000,000  | 0%                 | 100%               | No restriction   |
| Drinking Water Emerging Contaminants | \$4,000,000,000  | 0%                 | 100%               | 25% for Disadvantaged Communities or Public Water Systems Serving Fewer Than 25,000 Persons                                    |
| Drinking Water Lead                  | \$15,000,000,000 | 0%                 | 49%                | Disadvantaged Communities  |