



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

MAR 25 2019

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of Drinking Water State Revolving Fund (DWSRF) – Related Safe Drinking Water Act (SDWA) Amendments in America’s Water Infrastructure Act (AWIA) of 2018

FROM: Jennifer L. McLain, Acting Director
Office of Ground Water and Drinking Water

A handwritten signature in black ink, appearing to read "Jennifer L. McLain", is positioned to the right of the "FROM:" line.

TO: Water Division Directors
Regions 1 – 10

The purpose of this memorandum is to assist the EPA and states in implementing changes to the DWSRF Program enacted through the SDWA amendments provided in the AWIA of 2018. The attached document outlines DWSRF-related amendments to SDWA as mandated by AWIA and provides a plain language explanation of each provision.

The DWSRF is one of the nation’s most important investments in public health protection. Through state fiscal year 2018, states have signed more than \$38 billion worth of loans and other funding agreements with communities to build, repair, and improve drinking water infrastructure. The below-market financing available through the DWSRF saves millions of local dollars while expanding access to safe drinking water in homes, schools, and businesses.

The DWSRF set-asides have also played a critical role in public health protection by facilitating the investment of more than \$3.2 billion over the program’s lifespan towards operator certification, water system capacity development, and source water protection, as well as other activities that support safe drinking water.

State DWSRF managers should take particular note of AWIA’s changes to the SDWA that authorize extended infrastructure loan terms, require the provision of additional subsidy to state-defined disadvantaged communities, and expand source water protection-related eligibilities under the Local Assistance set-aside. These provisions will provide critical support to low-income communities and promote preventative activities to protect the water supply.

These changes take immediate effect. Please distribute this memorandum to state DWSRF program managers (including both PWSS and financial managers) as soon as possible. Questions may be directed to Anita Thompkins, Drinking Water Protection Division Director, at Thompkins.Anita@epa.gov.

Attachment

Implementation of DWSRF-Related Amendments in America's Water Infrastructure Act of 2018

On October 23, 2018, the President signed America's Water Infrastructure Act of 2018 into law. Among its provisions are amendments to the Safe Drinking Water Act §1452 (42 U.S.C. 300j-12) that provide changes to the DWSRF program, as summarized in the section-specific explanations below. Text in *italics* is new and text in ~~strike through~~ was deleted.

AWIA §2015(a): Use of Funds

As amended, the SDWA §1452(a)(2)(B) now states:

(B) Limitation

Financial assistance under this section may be used by a public water system only for expenditures (including expenditures for planning, design, *siting*, and associated preconstruction activities, ~~including activities relating to the siting or for replacing or rehabilitating aging treatment, storage, or distribution facilities of the facility~~ *public water systems*, but not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g-1 of this title or otherwise significantly further the health protection objectives of this subchapter.

Explanation: This section explicitly makes replacing or rehabilitating aging treatment, storage or distribution systems DWSRF-eligible. These activities were DWSRF-eligible prior to the AWIA amendments, per the DWSRF regulations,¹ and are now spelled out in the SDWA. States may continue using DWSRF funds for these activities.

AWIA §2015(b): Prevailing Wages

AWIA created a new SDWA §1452(a)(5), stating:

(5) Prevailing wages

The requirements of section 300j-9(e) of this title shall apply to any construction project carried out in whole or in part with assistance made available by a State loan fund.

Explanation: This section places the existing Davis-Bacon wage rate requirement for DWSRF-funded infrastructure projects into the DWSRF-authorizing section of the SDWA. Congress previously made this a permanent requirement via the Consolidated Appropriations Act of 2012.² Therefore, states must continue to ensure that DWSRF infrastructure assistance recipients comply with the Davis-Bacon Act.

AWIA §2015(c): Assistance for Disadvantaged Communities

As amended, the SDWA §1452(d) now states:

(1) Loan subsidy

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State

¹ 40 CFR §35.3520(b) and (c)

² Consolidated Appropriations Act, 2012 (Pub. L. 112-74)

expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) Total amount of subsidies

For each fiscal year, *of the amount of the capitalization grant received by the State for the year*, the total amount of loan subsidies made by a State pursuant to paragraph (1)

(A) may not exceed ~~30~~ 35 percent ~~of the amount of the capitalization grant received by the State for the year, and~~

(B) *to the extent that there are sufficient applications for loans to communities described in paragraph (1), may not be less than 6 percent.*

(3) "Disadvantaged community" defined

In this subsection, the term "disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

Explanation: This section requires states to use at least 6 percent but no more than 35 percent of the capitalization grant amount for additional subsidy for state-defined Disadvantaged Communities. Before AWIA, the floor was zero percent and the ceiling was 30 percent in the SDWA. This requirement pertains to capitalization grants awarded by the EPA to states after October 23, 2018. For most states, this is the Federal Fiscal Year 2019 grant.

Note that the Disadvantaged Community Additional Subsidy authority has existed since the DWSRF's inception and is distinct from the additional subsidy authority Congress provided under recent appropriations acts. This authority, typically titled the "Congressional Additional Subsidy Authority," mandated that states provide a certain percentage of their capitalization grant as additional subsidy to any DWSRF-eligible recipient. If Congress adds this authority to future appropriations acts, the EPA will issue guidance to explain the interaction between these two distinct subsidy authorities.

States must establish or continue to implement a Disadvantaged Community Program and solicit applications from water systems. The SDWA allows for the possibility that states may not meet the provision; note that the law text above says, "to the extent there are sufficient applications for loans...". States unable to find a sufficient number of disadvantaged community projects should explain in their Intended Use Plan (IUP) and Annual/Biennial Report why the provision was not met and what they are doing to ensure that this provision is met in future years (e.g., marketing, outreach, technical assistance).

As a reminder, under the Disadvantaged Community Additional Subsidy authority, subsidies must be in the form of a loan (e.g., loans which include principal forgiveness, negative interest rate loans).³ This provision does not authorize grants. Further, fees included as principal in a loan cannot be assessed on a disadvantaged community receiving additional subsidy under the Disadvantaged Community Additional Subsidy authority.⁴

³ 40 CFR §35.3525(b)(1)

⁴ 40 CFR §35.3530(b)(3)

EPA Regions must verify whether a state satisfies the mandate to use between 6 and 35 percent of the capitalization grant amount for the Disadvantaged Community Additional Subsidy at the time of grant application and during reviews.

AWIA §2015(d): Types of Assistance

As amended, the SDWA §1452(f) now states:

(f) Types of assistance

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only-

(1) to make loans, on the condition that-

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than ~~1 year~~ *18 months* after completion of the project for which the loan was made, ~~and each loan will be fully amortized not later than 20 years after the~~;

(C) *each loan will be fully amortized not later than 30 years after the* completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3)) a State may provide an extended term for a loan, if the extended term-

(i) terminates not later than the date that is ~~30~~ *40* years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

~~(C)~~(D) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

~~(D)~~(E) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

Explanation: This section extends the maximum-authorized DWSRF loan amortization period up to 30 years for any DWSRF-eligible recipient or up to 40 years for state-defined disadvantaged communities, or design life, whichever is shorter. Before AWIA, the maximum amortization period was 20 or 30 years, respectively. This section also extends the authorized loan repayment initiation up to 18 months after project completion, an increase from the pre-AWIA authorization of 12 months. Note that these changes apply only to the §1452(f)(1) authorization to *make loans* with the DWSRF.

The EPA considers the SDWA's DWSRF "design life" terminology to be functionally equivalent to the Clean Water Act's "useful life" terminology used to define maximum loan amortization terms in the Clean Water State Revolving Fund.⁵

Though loan terms may now extend up to 30 years for any recipient or up to 40 years for disadvantaged communities, states must only make loan terms not exceeding the design life of the infrastructure for *any* community. This principal is fundamental to effective utility management and sound financial capacity.

States make the determination for "design life" of a project using best professional engineering judgement. In practice, design life refers to major components of a water system. If components financed by a DWSRF loan or the purchase of a debt obligation have various design lives, applying a weighted average is a simple way to derive the maturity of the loan or the debt obligation.

For **programmatic financing**, which typically involves a single DWSRF loan agreement for several ready-to-proceed projects in a given year, specific projects are known, and the projects' design lives are determinable. **Portfolio financing** is a DWSRF program's commitment to financing projects over several years, usually from a utility's capital improvement plan. The out-year projects may be in the planning and design stage. For practical purposes, the design life may determine when those projects are finally ready to proceed and the loan agreement(s) is executed.

AWIA §2015(e): Needs Survey

As amended, the SDWA §1452(h) now states:

(h) Needs survey

(1) The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(2) *Any assessment conducted under paragraph (1) after October 23, 2018, shall include an assessment of costs to replace all lead service lines (as defined in section 300j–19b(a)(4) of this title) of all eligible public water systems in the United States, and such assessment shall describe separately the costs associated with replacing the portions of such lead service lines that are owned by an eligible public water system and the costs associated with replacing any remaining portions of such lead service lines, to the extent practicable.*

Explanation: The quadrennial Needs Survey shows the capital improvement need for DWSRF-eligible public water system infrastructure over the next 20 years.

This section requires the EPA to include an estimate of replacement costs for all lead service lines, public and private, in Needs Surveys conducted after October 23, 2018. Complete service line replacement is defined by replacing pipes up to the point of premise plumbing. Service lines consist of a publicly-owned section and a privately-owned section. The publicly owned portion of a service line is

⁵ Clean Water Act §603(d)(1)(A)

the section connected to the water main and running up to the property line. The privately-owned portion is the section running from the property line to connection to the premise plumbing (generally at an isolation valve). Replacement of the entire service line is DWSRF-eligible. Continuing from the publicly-owned portion of the pipe often found under a street, the service line from the public water main to the point at which it connects with premise plumbing is DWSRF-eligible. Premise plumbing is defined by the pipes found on the other side of the isolation valve. That connection may be inside or outside of homes and other buildings. Note that premise plumbing is not eligible for DWSRF funding.

AWIA §2015(f): Other Authorized Activities, and
AWIA §2002: Clean, Safe, Reliable Water Infrastructure

As amended, the SDWA §1452(k) now states:

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2), a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 300j–14(a)(1)(B)(i) of this title.

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 300g–9(c) of this title.

(C) Make expenditures from the capitalization grant of the State ~~for fiscal years 1996 and 1997~~ to delineate, assess, *and update assessments for* source water protection areas in accordance with section 300j–13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h–7 of this title *and for the implementation of efforts (other than actions authorized under subparagraph (A)) to protect source water in areas delineated pursuant to section 300j–13 of this title.*

(2) Limitation

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

- (A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).
- (B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).
- (C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).
- (D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).
- (E) To make expenditures to establish and implement wellhead protection programs, *and to implement efforts to protect source water*, pursuant to paragraph (1)(D).

Explanation: This section allows states to fund delineation and assessment of source water protection areas, and to update existing source water protection assessments, using the 15 percent Local Assistance and Other State Programs set-aside. That authorization had previously expired with the 1997 capitalization grant funding. Further, states may use this set-aside to fund activities to implement source water protection more generally.

AWIA §2015(g): Best Practices for Administration of State Revolving Loan Funds

AWIA created a new SDWA §1452(s), stating:

(s) Best practices for State loan fund administration

The Administrator shall-

(1) collect information from States on administration of State loan funds established pursuant to subsection (a)(1), including-

- (A) efforts to streamline the process for applying for assistance through such State loan funds;*
- (B) programs in place to assist with the completion of applications for assistance through such State loan funds;*
- (C) incentives provided to public water systems that partner with small public water systems to assist with the application process for assistance through such State loan funds;*
- (D) practices to ensure that amounts in such State loan funds are used to provide loans, loan guarantees, or other authorized assistance in a timely fashion;*
- (E) practices that support effective management of such State loan funds;*
- (F) practices and tools to enhance financial management of such State loan funds; and*
- (G) key financial measures for use in evaluating State loan fund operations, including-*
 - (i) measures of lending capacity, such as current assets and current liabilities or undisbursed loan assistance liability; and*

- (ii) measures of growth or sustainability, such as return on net interest;
- (2) not later than 3 years after October 23, 2018, disseminate to the States best practices for administration of such State loan funds, based on the information collected pursuant to this subsection; and
- (3) periodically update such best practices, as appropriate.

Explanation: This section directs the EPA to conduct a best practices evaluation by October 23, 2021.

AWIA §2019: Report on Federal Cross-Cutting Requirements

This section is part of AWIA and relates to the DWSRF, but not a new section of the SDWA.

SEC. 2019. REPORT ON FEDERAL CROSS-CUTTING REQUIREMENTS.

(a) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report containing the results of a study, to be conducted in consultation with the Administrator of the Environmental Protection Agency, any State agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) in a State, and public water systems, to identify demonstrations of compliance with a State or local environmental law that may be substantially equivalent to any demonstration required by the Administrator for compliance with a Federal cross-cutting requirement.

(b) DEFINITIONS. —In this subsection:

(1) FEDERAL CROSS-CUTTING REQUIREMENT.—The term “Federal cross-cutting requirement” means a requirement of a Federal law or regulation, compliance with which is a condition on receipt of a loan or loan guarantee pursuant to section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), that, if applied with respect to projects and activities for which a public water system receives such a loan or loan guarantee, would be substantially equivalent to a requirement of an applicable State or local law.

(2) PUBLIC WATER SYSTEM. —The term “public water system” has the meaning given that term in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f).

Explanation: This section directs the Government Accountability Office (GAO) to study whether state or local environmental cross-cutter laws “may be substantially equivalent” to those required by Congress and the EPA for DWSRF-funded infrastructure projects. Congress directs the GAO to work with the state drinking water primacy agencies and public water systems on this study and the report is due by October 23, 2019 (one year after AWIA’s enactment). The scope of this study may include all cross-cutters. The Davis-Bacon prevailing wage rates may be of particular interest to GAO, as some states and localities have prevailing wage rates which may equal or exceed those mandated by the Davis-Bacon Act.

AWIA §2020: Assistance for Areas Affected by Natural Disasters

This section is part of AWIA and relates to the DWSRF, but not a new section of the SDWA.

(a) DEFINITIONS.—In this section:

(1) **COMMUNITY WATER SYSTEM.**—The term “community water system” has the meaning given such term in section 1401(15) of the Safe Drinking Water Act (42 U.S.C. 300f(15)).

(2) **ELIGIBLE STATE.**—The term “eligible State” means a State, as defined in section 1401(13)(B) of the Safe Drinking Water Act (42 U.S.C. 300f(13)(B)).

(3) **ELIGIBLE SYSTEM.**—The term “eligible system” means a community water system—

(A) that serves an area for which, after January 1, 2017, the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)—

(i) has issued a major disaster declaration; and

(ii) provided disaster assistance; or

(B) that is capable of extending its potable drinking water service into an underserved area.

(4) **NATIONAL PRIMARY DRINKING WATER REGULATION.**—The term “national primary drinking water regulation” means a national primary drinking water regulation under section 1412 of the Safe Drinking Water Act (42 U.S.C. 300g–1).

(5) **UNDERSERVED AREA.**—The term “underserved area” means a geographic area in an eligible State that—

(A) is served by a community water system serving fewer than 50,000 persons where delivery of, or access to, potable water is or was disrupted; and

(B) received disaster assistance pursuant to a declaration described in paragraph (3)(A).

(b) STATE REVOLVING LOAN FUND ASSISTANCE.—

(1) **IN GENERAL.**—An eligible State may use funds provided pursuant to subsection (e)(1) to provide assistance to an eligible system within the eligible State for the purpose of restoring or increasing compliance with national primary drinking water regulations in an underserved area.

(2) **INCLUSION.**—

(A) **ADDITIONAL SUBSIDIZATION.**—With respect to assistance provided under paragraph (1), an eligible system shall be eligible to receive loans with additional subsidization (including forgiveness of principal, negative-interest loans, or grants (or any combination thereof)) for the purpose described in paragraph (1).

(B) **NONDESIGNATION.**—Assistance provided under paragraph (1) may include additional subsidization, as described in subparagraph (A), even if the service area of the eligible system has not been designated by the applicable eligible State as a disadvantaged community pursuant to section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j–12(d)(3)).

(c) EXCLUSION.—Assistance provided under this section shall not include assistance for a project that is financed (directly or indirectly), in whole or in part, with proceeds of any obligation issued after the date of enactment of this Act the interest of which is exempt from the tax imposed under chapter 1 of the Internal Revenue Code of 1986.

(d) NONDUPLICATION OF WORK.—An activity carried out pursuant to this section shall not duplicate the work or activity of any other Federal or State department or agency.

(e) ADDITIONAL DRINKING WATER STATE REVOLVING FUND CAPITALIZATION GRANTS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency \$100,000,000 to provide additional capitalization grants pursuant to section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) to eligible States, to be available—

(A) for a period of 24 months beginning on the date on which the funds are made available for the purpose described in subsection (b)(1); and

(B) after the end of such 24-month period, until expended for the purpose described in paragraph (3) of this subsection.

(2) SUPPLEMENTED INTENDED USE PLANS.—

(A) OBLIGATION OF AMOUNTS.—Not later than 30 days after the date on which an eligible State submits to the Administrator a supplemental intended use plan under section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)), from funds made available under paragraph (1), the Administrator shall obligate to such eligible State such amounts as are appropriate to address the needs identified in such supplemental intended use plan for the purpose described in subsection (b)(1).

(B) PLANS.—A supplemental intended use plan described in subparagraph (A) shall include information regarding projects to be funded using the assistance provided under subsection (b)(1), including, with respect to each such project—

(i) a description of the project;

(ii) an explanation of the means by which the project will restore or improve compliance with national primary drinking water regulations in an underserved area;

(iii) the estimated cost of the project; and

(iv) the projected start date for the project.

(3) UNOBLIGATED AMOUNTS.—Any amounts made available to the Administrator under paragraph (1) that are unobligated on the date that is 24 months after the date on which the amounts are made available shall be available for the purpose of providing additional grants to States to capitalize State loan funds as provided under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12).

(4) APPLICABILITY.—

(A) IN GENERAL.—Except as otherwise provided in this section, all requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) shall apply to funding provided under this section.

(B) INTENDED USE PLANS.—Section 1452(b)(1) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)(1)) shall not apply to a supplemental intended use plan under paragraph (2).

(C) STATE CONTRIBUTION.—For amounts authorized to be appropriated under paragraph (1), the matching requirements in section 1452(e) of the Safe Drinking Water Act (42 U.S.C. 300j–12(e)) shall not apply to any funds provided to the Commonwealth of Puerto Rico under this section.

Explanation: This section authorizes \$100 million in supplemental DWSRF capitalization grants for states with community water systems serving an area for which the President issued a Stafford Act

emergency declaration after January 1, 2017 or systems that can extend service to an “underserved area” that received Stafford Act disaster assistance.

Congress has not yet provided an appropriation to fund these supplemental capitalization grants. Actual appropriation levels will be at Congressional discretion.

AWIA §2022: American Iron and Steel Products

As amended, the SDWA §1452(a)(4)(A) now states:

(4) American iron and steel products

(A) In general

During ~~fiscal year 2017~~ *fiscal years 2019 through 2023*, funds made available from a State loan fund established pursuant to this section may not be used for a project for the construction, alteration, or repair of a public water system unless all of the iron and steel products used in the project are produced in the United States.

Explanation: This section extends the American Iron and Steel, or AIS, provision for DWSRF-funded projects through federal fiscal year 2023. See attached *Application of American Iron and Steel Requirements for Drinking Water State Revolving Fund Projects for Fiscal Years 2019 Through 2023* memorandum released on November 20, 2018, for more information.

AWIA §2023: Authorization of Appropriations

As amended, the SDWA §1452(m) now states:

(m) Authorization of appropriations

(1) There are authorized to be appropriated to carry out the purposes of this section ~~\$599,000,000 for the fiscal year 1994 and \$1,000,000,000 for each of the fiscal years 1995 through 2003.~~

(A) *\$1,174,000,000 for fiscal year 2019;*

(B) *\$1,300,000,000 for fiscal year 2020; and*

(C) *\$1,950,000,000 for fiscal year 2021.*

(2) To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year ~~(prior to the fiscal year 2004)~~. Such sums shall remain available until expended.

Explanation: This section reauthorizes the DWSRF from federal fiscal years 2019 through 2021. Actual appropriation levels will be at Congressional discretion.

Other AWIA sections involving the DWSRF:

AWIA §2010: Additional Considerations for Compliance

AWIA added additional sections under SDWA §1414 Subsection (h), “Consolidation incentive.” This section of SDWA involves drinking water regulation enforcement and is thus relevant to the DWSRF’s SDWA-compliance focus. AWIA added the following under Subsection (h):

(3) Authority for mandatory assessment

(A) Authority

A State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility) may require the owner or operator of a public water system to assess options for consolidation, or transfer of ownership of the system, as described in paragraph (1), or other actions expected to achieve compliance with national primary drinking water regulations described in clause (i)(I), if-

(i) the public water system-

(I) has repeatedly violated one or more national primary drinking water regulations and such repeated violations are likely to adversely affect human health; and

(II)(aa) is unable or unwilling to take feasible and affordable actions, as determined by the State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility), that will result in the public water system complying with the national primary drinking water regulations described in subclause (I), including accessing technical assistance and financial assistance through the State loan fund pursuant to section 300j-12 of this title; or (bb) has already undertaken actions described in item (aa) without achieving compliance;

(ii) such consolidation, transfer, or other action is feasible; and

(iii) such consolidation, transfer, or other action could result in greater compliance with national primary drinking water regulations.

(B) Tailoring of assessments

Requirements for any assessment to be conducted pursuant to subparagraph (A) shall be tailored with respect to the size, type, and characteristics, of the public water system to be assessed.

(C) Approved entities

An assessment conducted pursuant to subparagraph (A) may be conducted by an entity approved by the State requiring such assessment (or the Administrator, if the State does not have primary enforcement responsibility), which may include such State (or the Administrator, as applicable), the public water system, or a third party.

(D) Burden of assessments

It is the sense of Congress that any assessment required pursuant to subparagraph (A) should not be overly burdensome on the public water system that is assessed.

(4) Financial assistance

Notwithstanding section 300j-12(a)(3) of this title, a public water system undertaking consolidation or transfer of ownership or other actions pursuant to an assessment completed under paragraph (3) may receive a loan described in section 300j-12(a)(2)(A) of this title to carry out such consolidation, transfer, or other action.

(5) Protection of nonresponsible system

(A) Identification of liabilities

(i) In general

An owner or operator of a public water system that submits a plan pursuant to paragraph (1) based on an assessment conducted with respect to such public water system under paragraph (3) shall identify as part of such plan-

- (I) any potential and existing liability for penalties and damages arising from each specific violation identified in the plan of which the owner or operator is aware; and*
- (II) any funds or other assets that are available to satisfy such liability, as of the date of submission of such plan, to the public water system that committed such violation.*

(ii) Inclusion

In carrying out clause (i), the owner or operator shall take reasonable steps to ensure that all potential and existing liabilities for penalties and damages arising from each specific violation identified in the plan are identified.

(B) Reservation of funds

A public water system that, consistent with the findings of an assessment conducted pursuant to paragraph (3), has completed the actions under a plan submitted and approved pursuant to this subsection shall not be liable under this subchapter for a violation of this subchapter identified in the plan, except to the extent to which funds or other assets are identified pursuant to subparagraph (A)(i)(II) as available to satisfy such liability.

(6) Regulations

Not later than 2 years after October 23, 2018, the Administrator shall promulgate regulations to implement paragraphs (3), (4), and (5).

Explanation: This gives SDWA primacy agencies the authority to mandate that drinking water systems undertake a consolidation assessment if they meet the delineated threshold. Note that this section refers, on several occasions, to SDWA §300j–12. This is the authorizing section for the DWSRF (a.k.a. SDWA §1452). This new section of law explicitly allows states to use DWSRF funding for these consolidation assessments and actual consolidations. These were eligible prior to AWIA’s passage and therefore states may continue funding these activities.

AWIA §2012: Asset Management

AWIA amended SDWA §1420, the section that requires the EPA and states to help water systems develop financial, managerial, and financial capacity. States may not provide DWSRF loan assistance to systems lacking these capabilities, unless such assistance will help them achieve capacity.⁶ AWIA added the text in *italics* below to §1420 (c) and (d):

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only-

- (A) 90 percent in fiscal year 2001;
- (B) 85 percent in fiscal year 2002; and
- (C) 80 percent in each subsequent fiscal year, of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

⁶ SDWA §1452(a)(3)(A)

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate-

- (A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;
- (B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;
- (C) a description of how the State will use the authorities and resources of this subchapter or other means to-
 - (i) assist public water systems in complying with national primary drinking water regulations;
 - (ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and
 - (iii) assist public water systems in the training and certification of operators;
- (D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; ~~and~~
- (E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers); *and*
- (F) *a description of how the State will, as appropriate-*
 - (i) encourage development by public water systems of asset management plans that include best practices for asset management; and*
 - (ii) assist, including through the provision of technical assistance, public water systems in training operators or other relevant and appropriate persons in implementing such asset management plans.*

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State, *including efforts of the State to encourage development by public water systems of asset management plans and to assist public water systems in training relevant and appropriate persons in implementing such asset management plans.*

(4) Review

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j-12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall-

- (i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and
- (ii) initiate a partnership with States, public water systems, and the public to develop information for States on recommended operator certification requirements.

(B) Publication of information

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(5) Information on asset management practices

Not later than 5 years after October 23, 2018, and not less often than every 5 years thereafter, the Administrator shall review and, if appropriate, update educational materials, including handbooks, training materials, and technical information, made available by the Administrator to owners, managers, and operators of public water systems, local officials, technical assistance providers (including nonprofit water associations), and State personnel concerning best practices for asset management strategies that may be used by public water systems.

Explanation: This section mandates that states consider and include as appropriate in their state capacity development strategy, a description of how the state will encourage the development of asset management plans that include best practices and any training, technical assistance, and other activities that would help implement asset management plans. The section also mandates that primacy agencies include in their triennial capacity development reports to the Governor a description of how the state will encourage water systems to develop asset management plans, including the provision of technical assistance. This section also mandates that the EPA review and, if appropriate, update technical assistance and best practice documents for asset management.

Note that asset management plans (as part of planning and design) and related system software are eligible capital expenses as part of a DWSRF infrastructure loan. The development and implementation of asset management plans for communities are also eligible expenses under the 15% Local Assistance and Other State Programs set-aside (for Capacity Development).

AWIA §4201: WIFIA Reauthorization and Innovative Financing for State Loan Funds

This section adds additional flexibilities for state DWSRF programs to utilize funding from the WIFIA program.