CIFA

COUNCIL OF INFRASTRUCTURE FINANCING AUTHORITIES

March 23, 2020

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Environment and Public Works Committee
United States Senate
456 Dirksen Senate Office Building
Washington, D.C 20510

The Honorable Peter DeFazio
Chairman
Transportation & Infrastructure Committee
U.S. House of Representatives
2164 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sam Graves
Ranking Member
Transportation & Infrastructure Committee
U.S. House of Representatives
2164 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone, Jr.
Chairman
Energy & Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Greg Walden
Ranking Member
Energy & Commerce Committee
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Barrasso, DeFazio and Pallone and Ranking Members Carper, Graves and Walden:

America's Clean Water and Drinking Water State Revolving Funds (SRFs) are the nation's premier programs for financing water infrastructure that protects public health and the environment. If the Congress pursues a comprehensive infrastructure package in response to the coronavirus, the SRFs are a proven federal-state partnership that can quickly, effectively and efficiently deliver federal funding for construction of water infrastructure projects to communities recovering from the current unprecedented public health emergency.

To support communities in the immediate aftermath of this crisis, the Council of Infrastructure Financing Authorities (CIFA) has identified specific measures that could accelerate the disbursement of federal funding for water infrastructure projects through the SRFs.

I. Recommendation: Eliminate the 20% state match requirement for the 2020 capitalization grants for the Clean Water and Drinking Water SRFs.

Background: States are required to contribute 20% of the capitalization grant for the SRFs to be awarded federal funding. State contributions must be deposited into the SRF account before federal funding is released. The America Recovery and Reinvestment Act of 2009 didn't require state match because of concern that the requirement could delay deployment of federal funds.

Benefit: Eliminating the state match will help states dealing with a sudden loss of tax revenue or inability to access financing for state match through the municipal bond market, ensuring federal funding for SRF subsidized loans for water infrastructure projects is available as soon as possible.

II. Recommendation: Ensure Principal Forgiveness continues to be an eligible form of additional subsidization for both the Clean Water and Drinking Water SRFs.

Background: Additional subsidization is funding that doesn't need to be repaid. Additional subsidization comes in three forms – Principal Forgiveness, grants and negative interest loans. All states use Principal Forgiveness which works the same as a grant but without the additional federal grant requirements associated with federally funded projects, such as those funded by the capitalization grant. Compliance with these additional federal requirements increases the administrative cost of loans without increasing protection for public health or the environment. Additionally, some states, like Oklahoma and Washington, prohibit the use of grants by the SRFs.

Benefit: Ensuring Principal Forgiveness is an eligible form of additional subsidization ensures all states will be able to access federal funding for the SRFs and reduces the paperwork burden for loan recipients while maintaining protection for the public health and the environment.

III. Recommendation: Increase flexibility for the use of additional subsidization, which includes Principal Forgiveness, grants and negative interest loans, by SRFs. Specifically,

- Eliminate the federally mandated minimum on additional subsidization, which is 10% of the capitalization grant for the Clean Water SRF and 20% of the capitalization grant for the Drinking Water SRF.
- Raise the federally mandated cap on additional subsidization from 30% to 50% for both the Clean Water and Drinking Water SRFs and allow all applicants to be eligible for additional subsidization.

Background: The 2020 Appropriations Act allows all eligible SRF applicants to be eligible for federally mandated additional subsidization while the Clean Water Act and Safe Drinking Water Act limit eligibility for option additional subsidization (30%) based on affordability criteria.

Additional subsidization is an important tool to help communities build water infrastructure projects that wouldn't otherwise be undertaken. However, additional subsidization also reduces the total number of water infrastructure projects that can be funded by the federal capitalization grant.

Many states provide state grants to complement the SRF subsidized loans and could benefit from the ability to provide more subsidized loans rather than more additional subsidization. Conversely, other states are currently using the maximum allowed additional subsidization for one or both programs so maintaining the total level of additional subsidization is critical.

Benefit: Providing flexibility for additional subsidization and allowing all SRF applicants to be eligible for additional subsidization allows states to help communities in need, whether it's funding more water infrastructure projects or providing more financial support to fewer water infrastructure projects.

IV. Recommendation: Suspend the following requirements on water infrastructure projects funded by SRFs:

- Architectural and Engineering Procurement
- Cost-and-Effectiveness Analysis and Certifications (Clean Water SRF)
- Fiscal Sustainability Plans and Certifications (Clean Water SRF)

Background: Since 2014, Clean Water SRF loans, including loans made with 100% state funds, have required recipients to conduct a cost-and-effectiveness analysis and develop a fiscal sustainability plan for all treatment works projects, including replacement of pipes and rehabilitation of minor components. Also, water infrastructure projects that are federally funded are required to use the federal procurement process for architectural and engineering services which can delay projects in states with a different procurement approach. Some states don't fund architectural and engineering services with federal funding because of this requirement.

Benefit: Eliminating the federal mandates and allowing SRF managers to determine appropriate requirements for each SRF loan could accelerate the application and approval process for the vast majority of SRF projects, while maintaining protection for public health and the environment. Small communities are likely to experience the greatest benefit from this regulatory relief.

V. Recommendation: Waive the requirement that 10% of the Clean Water SRF capitalization grant be used for the Green Project Reserve.

Background: The 2020 Consolidated Appropriations Act requires Clean Water SRFs to allocate 10% of the capitalization grant for green infrastructure or energy and water conservation projects. Green infrastructure projects are a priority in many states and those projects will continue to be funded. However, to meet this requirement, some SRFs must use additional subsidization, primarily Principal Forgiveness, that would otherwise be used to address affordability.

Benefit: Allowing SRFs to determine the projects that are funded will ensure the highest priorities are met and additional subsidization is maximized, particularly during these challenging times.

VI. Recommendation: Require the U.S. Department of Labor (DOL) to adopt state prevailing wages for heavy construction, just like they do for highway construction.

Background: 26 states have state prevailing wage laws. According to its Inspector General, the U.S. Department of Labor adopts state prevailing wages for highway construction but not for other types of construction, including heavy construction which encompasses most water infrastructure projects.

Benefit: Adopting state prevailing wages for heavy construction, just like for highway construction, will streamline the procurement process for water infrastructure projects funded by SRFs.

VII. Recommendation: Maintain the requirement to pay federal prevailing wages but allow states with state prevailing wage laws to be considered in compliance with the federal Davis Bacon Act for water infrastructure projects that receive federal funding, including subsidized loans from the SRFs and WIFIA.

Background: Since 2009, all SRF loans, including loans made with 100% state funds, have required recipients to ensure mechanics and laborers on water infrastructure projects are paid the prevailing federal wage. Compliance with both federal and state law is duplicative and adds to the administrative cost of water infrastructure projects without providing additional benefits to workers.

Benefit: Allowing compliance reciprocity, coupled with the federal adoption of state prevailing wages, will significantly reduce the burden and cost of compliance for water infrastructure projects, while ensuring workers are paid the required wages.

VIII. Recommendation: Maintain the requirement to pay federal prevailing wages but allow states without state prevailing wage laws to develop their own procedures for compliance with the federal Davis Bacon Act, just like they do with NEPA, for water infrastructure projects that receive federal funding, including subsidized loans from the SRFs and WIFIA.

Background: The Federal Water Protection Control Act Section 602(b)(6) appears to provide the same flexibility for compliance with Davis Bacon as it does for NEPA. For more than 30 years, federal law has allowed SRFs to develop their own procedures, "as determined by the Governor of the State," to comply with NEPA. However, SRF loan recipients are instead required to comply with prescriptive federal compliance procedures, which can be complex and burdensome.

"(6) treatment works eligible under this Act which will be constructed in whole or in part with assistance made available by a State water pollution control revolving fund authorized under this title, or section 205(m) of this Act, or both, will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 511(c)(1) and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act."

Benefit: Maintaining the requirement to pay federal prevailing wages but allowing the Governor of the State to develop state compliance procedures consistent with the federal Davis Bacon law, just like NEPA, can reduce the cost and burden of paperwork and procedures, while still ensuring workers are paid the required wages.

IX. Recommendation: Allow the U.S. Environmental Protection (EPA) to immediately issue the Notice of Funding Availability (NOFA) for the 2020 appropriation of the Water Infrastructure Finance and Innovation Act (WIFIA).

Background: The 2020 Consolidated Appropriations Act provides $55 million for WIFIA, including $5 million for SRFs, which could provide as much as $5.5 billion in loans for water infrastructure projects. However, it also requires EPA, the U.S. Treasury and the Office of Management and Budget to agree on the definition of a federal project before issuing the NOFA for the 2020 appropriation for WIFIA.

Benefit: Issuing the NOFA now can expedite the process of awarding WIFIA loans, which could move up the timetable for construction of water infrastructure projects.

X. Recommendation: Require the EPA to accept the State Environmental Review Process (SERP) in lieu of a determination required by the National Environment Policy Act (NEPA) for projects funded through WIFIA.

Background: Two environmental reviews – SERP and NEPA – are currently required for SRFs that apply to WIFIA and projects co-funded by WIFIA and SRFs. The EPA has accepted the SERP in lieu of a NEPA determination for SRF projects since the Clean Water SRF was established more than three decades ago. In fact, federal law explicitly allows for states to "apply its own "NEPA-like" SERP for conducting environmental reviews." To ensure the SRF process aligns to NEPA, federal law defines the elements that must be included in the SERP and EPA must approve each SERP before awarding the annual federal capitalization grant.

Benefit: Eliminating duplicative environmental reviews for WIFIA applicants will significantly expedite the application and approval process, while maintaining protection for public health and the environment.

XI. Recommendation: Require all agencies across the federal government to accept the SERP in lieu of a NEPA determination for all projects co-funded by an SRF.

Background: Like WIFIA, other federal agencies, including the Federal Emergency Management Agency (FEMA), require a NEPA determination, in addition to a SERP, for projects co-funded by an SRF.

Benefit: Eliminating duplicative environmental reviews will expedite the application and approval process for federally funded projects, while maintaining protection for public health and the environment.

Finally, one-third of SRFs rely on tax-exempt municipal bonds to leverage their programs and increase funding for water infrastructure projects. In the event that the public finance market continues to be unable to provide that funding, access to loans through the WIFIA program for may be an alternative form of financing for SRFs.

Thank you in advance for your consideration. If you have any questions or need more information, please contact our Executive Director, Deirdre Finn, at dfinn@cifanet.org or (850) 445-9619.

Sincerely,

Kim Colson, CIFA President
Director, Division of Water Infrastructure
North Carolina Department of Environmental Quality

About CIFA

CIFA is a national not-for-profit organization that represents state government agencies, including financing authorities and departments of health and environmental protection, that manage the Clean Water and Drinking Water State Revolving Funds.