



December 3, 2021

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Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
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Washington, D.C. 20460

Dr. Andrew Sawyers
Office of Wastewater Management
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RE: Justice40 Initiative

Dear Drs. McLain and Sawyers:

Thank you for the opportunity to provide comments and suggestions for implementation of the Justice40 Initiative.

The Clean Water and Drinking Water State Revolving Funds (SRFs) are the nation's premier programs for funding water infrastructure that protects public health and the environment. Since the programs were established, SRF subsidized loans have significantly cut the cost of water infrastructure projects in tens of thousands of communities across the nation, saving billions of dollars for ratepayers.

Importantly, disadvantaged communities, which may not have qualified or likely would have paid more for financing in the private market, have benefited the most from SRF subsidized loans. Additionally, water infrastructure built with SRF subsidized loans have increased water security for disadvantaged populations and communities while helping to maintain more affordable user rates.

The Council of Infrastructure Financing Authorities (CIFA) looks forward to working with you to achieve the goals of the Justice40 Initiative.

Sincerely,

James P McGoff
COO and Director of Environmental Programs
Indiana Finance Authority
CIFA President

About CIFA

CIFA is a national not-for-profit organization that represents the Clean Water and Drinking Water State Revolving Funds (SRFs), the nation's premier programs for funding water infrastructure that protects public health and the environment.

Board of Directors, Officers:

- James P McGoff, Indiana Financing Authority, President
- Jeff Walker, Texas Water Development Board, Treasurer
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- EPA Region 9: Lance Reese, California State Water Resources Control Board
- EPA Region 10: Jeff Nejedly, Washington State Department of Ecology
- Financial Community: Anne Burger Entrekin, Hilltop Securities



Justice40

Proposed Framework

I. Benefits of Federal Funding for Water Infrastructure

Affordable access to safe drinking water, wastewater services, and stormwater management provides significant public health, societal and economic benefits to communities, especially disadvantaged communities and underserved populations. A reliable supply of safe drinking water and a clean environment provides the foundation for healthy, livable communities which are essential for a robust economy and job creation.

A. The Clean Water and Drinking Water SRFs fulfill the goals of the Justice40 Initiative as outlined in the Interim Implementation Guidance issued by the Office of Management and Budget on July 20, 2021.

First and foremost, providing access to drinking water, wastewater and stormwater services offers innumerable public health benefits for individual households, particularly the most vulnerable including children, the elderly, the ill and the immunocompromised, as well as for the broader community. Importantly, ensuring access to safe, reliable and affordable drinking water – free of lead and other contaminants – provides water security to low-income families, particularly those living in disadvantaged communities.

Moreover, clean water and a healthy environment are the foundation of a high quality of life and robust economy. Investing in water infrastructure creates high-wage jobs across the water sector, from planning and design to construction to operations and management. Additionally, building more resilient water systems mitigates against the public health and economic impacts of climate change and extreme weather.

B. The Clean Water and Drinking Water SRFs are state-federal partnerships that efficiently and effectively deliver federal funding to build water infrastructure that protects public health and the environment.

Since the programs were established, the Clean Water and Drinking Water SRFs have provided more than \$190 billion in subsidized loans through more than 59,000 assistance agreements to build critical water infrastructure projects. SRF subsidized loans have saved billions of dollars for ratepayers in communities across the nation, while improving water services and helping to maintain affordable user rates.

C. The Clean Water and Drinking Water SRFs have a proven record of supporting development and construction of water infrastructure for disadvantaged communities and disadvantaged populations.

Since 2009 when additional subsidy (in the form of principal forgiveness and grants) was first authorized, the Clean Water SRFs have provided \$5.5 billion in additional subsidy – 26% of federal funding over the same timeframe. Since the program was established, the Drinking Water SRFs have provided \$11.6 billion to disadvantaged communities – 24% of federal funding – through more than 5,500 assistance agreements.

II. Eligible Uses of Federal Funding for Water Infrastructure

The Clean Water and Drinking Water SRFs use their annual capitalization grant to fund a comprehensive suite of activities to help water systems provide and maintain access to affordable water services.

A. The overwhelming majority of federal funding for the Clean Water and Drinking Water SRFs is used to fund development and construction of water infrastructure projects, from concept to construction.

SRFs provide water systems with subsidized loans and additional subsidy to build, rehabilitate, and upgrade water infrastructure to meet stringent water quality standards. Funding is also available for pre-construction activities, including, but not limited to, feasibility and rate studies, planning, design, and engineering.

B. The Clean Water and Drinking Water SRFs use a percentage of their annual capitalization grant for additional subsidy.

Under federal law, the Clean Water SRF can use up to 30% of their annual capitalization grant for additional subsidy to communities that meet affordability criteria and the Drinking Water SRF can use up to 35% of their annual capitalization grant for additional subsidy to disadvantaged communities. The Infrastructure Investment and Jobs Act requires the Clean Water and Drinking Water SRFs to provide a minimum of 10% and 12% of their capitalization grant, respectively, to communities that meet these criteria.

C. The Drinking Water SRFs can use 2% of their capitalization grant for technical assistance to help small, rural and disadvantaged communities.

SRFs provide small, rural and disadvantaged water systems with technical assistance to address an array of challenges, from completing applications for funding to providing operator training to developing asset management plans to assisting with disaster preparedness.

D. The Drinking Water SRFs can use 10% of its capitalization grant to fund state programs focused on providing safe drinking water.

Drinking Water SRFs provide funding for state programs, such as the Public Water System Supervision (PWSS) Program, to support compliance with federal drinking water standards.

E. The Drinking Water SRF can up 15% of its capitalization grant to fund local programs focused on providing safe drinking water.

Drinking Water SRFs provide funding for state and local programs to address a range of water challenges, such as source water and wellhead protection, climate adaptation and resiliency planning, and capacity development.

F. Historically, the Clean Water SRFs have provided technical assistance using revenue from sources other than the capitalization grant.

Because technical assistance has not been an eligible use of the capitalization grant, many Clean Water SRFs have used other sources of funding, such as administrative set-asides and fees, to provide technical assistance to help communities with an array of challenges, such as developing climate resiliency plans, supporting apprenticeship programs, and developing asset management plans.

G. The Clean Water SRFs now have the ability to use 2% of their capitalization grant for technical assistance.

The Infrastructure Investment and Jobs Act (H.R. 3684) provides the Clean Water SRFs with the ability, for the first time, to use 2% of their capitalization grant for technical assistance to support development and construction of water infrastructure in small, rural and tribal communities.

III. Defining Disadvantaged Communities and Populations

SRFs typically fund water systems. Some water systems serve a single, clearly defined community while other water systems serve multiple, diverse communities or neighborhoods within a community.

A. Federal law provides a statutory basis for defining disadvantaged communities.

Under federal law, states are required to establish criteria for defining disadvantaged communities and affordability.

The Safe Drinking Water Act requires states to define disadvantaged communities for the SRFs based on affordability criteria.

Safe Drinking Water Act §300j-12(d)(3)

“(3) DEFINITION OF DISADVANTAGED COMMUNITY.—

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.”

Similarly, the Clean Water Act requires states to define an affordability criterion based on income and unemployment data, population trends and other relevant data.

Clean Drinking Water Act §1383 (2)(A)

“(2) Affordability criteria

(A) Establishment

(i) In general

Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.

(ii) Contents

The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 3161 of title 42.”

B. Criteria used to define disadvantaged communities can serve as guidance for defining disadvantaged populations within a community.

Water systems that don’t meet the criteria for affordability or a disadvantaged community may have disadvantaged populations within their service area that are benefiting from federal funding through the SRFs.

Disadvantaged populations may be defined as the percent of households within a service area of a water system that meet similar criteria to those used to establish criteria for disadvantaged communities, such as:

- Low-income households
- Unemployment rates
- Small or declining populations
- Lack of access to centralized drinking water and wastewater systems

C. EPA should encourage the SRFs to customize their strategy and formula for delivering federal benefits to disadvantaged communities and populations within their state.

Because states across the nation have drastically different demographic and socio-economic profiles, developing a one-size-fits-all approach will be difficult and may even be counterproductive to the goals of the Justice40 Initiative. Providing flexibility within a broad federal framework will ensure states are serving the most disadvantaged communities and populations within their state. Allowing states to use current definitions for disadvantaged communities or affordability criteria for one or both SRFs will ensure disadvantaged communities in each state are served by the SRFs.

IV. Measuring the Benefits of Federal Funding for Water Infrastructure

The percent of annual federal funding, or the equivalent of federal funding, that benefits disadvantaged communities and populations is one way to measure the federal benefits of SRF subsidized loans.

A. All uses of the capitalization grant should be included in the benefit calculation.

Funding for development and construction of water infrastructure projects, technical assistance, state programs and local programs should be included in the calculation. Subsidized loans are the greatest federal benefit for disadvantaged communities who are less likely to qualify and more likely to pay more for financing in the private sector.

B. For communities that meet the criteria for a disadvantaged community, total funding should be included in the benefit calculation.

The amount of the subsidized loan and additional subsidy, which is funding that doesn't need to be repaid and comes in the form of principal forgiveness and grants, should be included in the calculation.

C. For communities that don't meet the criteria for a disadvantaged community, a proportionate amount of total funding, based on disadvantaged populations, should be included in the benefit calculation.

The percent of the disadvantaged population within the service area of the water system should be used to determine the portion of the water infrastructure project that can be used in the calculation. For example, a water system with a service area where 20% of the population is considered disadvantaged, then 20% of the subsidized loan for a water infrastructure project can be used in the calculation.

D. EPA should ensure the primary focus of the SRFs remains the protection of public health and the environment.

Addressing the most serious risk to public health and ensuring compliance with stringent water quality standards in *all* communities should continue to be the priority of the SRFs.

E. EPA should allow the SRFs to use the equivalent of the federal funding rather than requiring the use of actual federal funds for water infrastructure projects in disadvantaged communities.

Water infrastructure projects funded by the annual federal capitalization grants have additional federal mandates which increase the administrative burden and cost of compliance of water infrastructure projects. Allowing SRFs to use the equivalent of federal funding, instead of actual federal funding, will alleviate that burden on disadvantaged communities, which often lack the professional capacity to manage the additional paperwork and processes.

IMPLEMENTATION EXAMPLES:

Based on the framework above, the following SRFs would meet the goal of Justice40:

- An SRF that uses 40% of their capitalization grant for a combination of subsidized loans and additional subsidy to disadvantaged communities.
 - 20% subsidized loans to disadvantaged communities
 - 20% additional subsidy to disadvantaged communities

- An SRF that uses 38% of their capitalization grant for a combination of subsidized loans and additional subsidy to disadvantaged communities and 2% of their capitalization grant for technical assistance for small, rural and disadvantaged communities.
 - 19% subsidized loans to disadvantaged communities
 - 19% additional subsidy to disadvantaged communities
 - 2% technical assistance for small, rural and disadvantaged communities

- An SRF that uses 20% of their capitalization grant for a combination of subsidized loans and additional subsidy to disadvantaged communities and 20% of their capitalization grant for subsidized loans that benefit disadvantaged populations in communities that are not defined as disadvantaged.
 - 10% for subsidized loans to disadvantaged communities
 - 10% for additional subsidy to disadvantaged communities
 - 20% for subsidized loans to water systems that serve disadvantaged populations (This would be the cumulative amount of SRF loans that could be counted as a benefit to disadvantaged populations in communities that are not defined as disadvantaged. Each loan would have to be calculated separately, such as.
 - \$10 million for water system that is not disadvantaged
 - 25% of the service is designated as a disadvantaged population
 - 25% of the loan or \$2.5 million could be attributed toward meeting the Justice40 goal.

- An SRF that uses 20% of their capitalization grant for a combination of subsidized loans and additional subsidy to disadvantaged communities and 20% of their capitalization grant for state and local programs that benefit disadvantaged communities and disadvantaged populations.
 - 10% for subsidized loans to disadvantaged communities
 - 10% for additional subsidy to disadvantaged communities
 - 20% for state and local programs that benefit disadvantaged communities and populations