

ENVIRONMENTAL PROTECTION AGENCY

ASSISTANCE LISTING 66.458 CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

ASSISTANCE LISTING 66.482 DISASTER RELIEF APPROPRIATIONS ACT (DRAA) HURRICANE SANDY CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to states to create and maintain Clean Water State Revolving Funds (CWSRFs) to (1) enable states to encourage construction of wastewater treatment facilities to meet the enforceable requirements of the Clean Water Act (Act); (2) increase the emphasis on nonpoint source pollution control and protection of estuaries; and (3) establish permanent financing institutions in each state to provide continuing sources of financing to maintain water quality.

II. PROGRAM PROCEDURES

The CWSRF program is established in each state by capitalization grants from the Environmental Protection Agency (EPA). The CWSRF provides loans and other types of financial assistance to qualified communities and local agencies. The CWSRF is a permanent revolving fund to provide loans and other assistance. Since the enabling legislation was enacted in 1987, capitalization grants have been available to states in most years. EPA implements the CWSRF in a manner that preserves a high degree of flexibility for states in operating their revolving funds in accordance with each state's unique needs and circumstances.

States are required to provide an amount equal to 20 percent of the capitalization grant as state matching funds to receive a grant. Capitalization grant applications must include (1) an Intended Use Plan (IUP), which lists proposed projects eligible for financing from CWSRF loans; (2) an identification of the source of the matching amount; (3) a proposed payment schedule; and (4) certain certifications and demonstrations. States may transfer an amount up to 33 percent of its Drinking Water State Revolving Fund (DWSRF) (Assistance Listing 66.468) capitalization grant to the CWSRF or an equivalent amount from the CWSRF to the DWSRF program.

The Disaster Relief Appropriations Act (Pub. L. No. 113-2) provided funds for awards to the states of New York and New Jersey for wastewater facilities impacted by Hurricane Sandy. EPA awarded these funds under Assistance Listing 66.482. Those funds are subject to all the compliance requirements that apply to Assistance Listing 66.458 except as indicated in III, "Compliance Requirements," of this program supplement.

On June 6, 2019, the "Additional Supplemental Appropriations for Disaster Relief Act, 2019," or ASADRA (Pub. L. No. 116-20), was signed into law. The law provided funds to Alabama, Alaska, California, Georgia, Florida, North Carolina, and South Carolina CWSRF programs for drinking water facilities impacted by Hurricanes Florence and Michael, Typhoon Yutu, and calendar year 2018 wildfires and earthquakes.

Source of Governing Requirements

The CWSRF program is authorized under Title VI of the Clean Water Act (33 USC 1381 et seq.) (Act), the Disaster Relief Appropriations Act (Pub. L. No. 113-2), and the “Additional Supplemental Appropriations for Disaster Relief Act, 2019”, or ASADRA (Pub. L. No. 116-20). The implementing regulations are found in 40 CFR Part 35, Subpart K.

Availability of Other Program Information

General information about the program is available on the EPA Clean Water State Revolving Fund home page (<https://www.epa.gov/cwsrf>).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	N	N	N

A. Activities Allowed or Unallowed

1. *Financial Assistance*

- a. The CWSRF may provide financial assistance (1) to municipalities, inter-municipal, interstate, or state agencies for the construction of publicly

owned treatment works, as defined in section 212 of the Act that are on the state's project priority list; (2) for implementing nonpoint source management programs under section 319 of the Act; (3) for developing and implementing estuary management plans under section 320 of the Act (33 USC 1383(c)); (4) for the construction, repair or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage; (5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water; (6) to any municipality, or intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse; (7) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the Act; (8) to any municipality, or intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works; (9) for reusing or recycling wastewater, stormwater, or subsurface drainage water; (10) for measures to increase the security of publicly owned treatment works; (11) to any qualified nonprofit entity, as determined by the EPA Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and, to assist such treatment works in achieving compliance with the Act; and (12) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to an eligible individual (as defined in subsection (j)).

- (1) For the repair or replacement of existing individual household decentralized wastewater treatment systems; or
- (2) In a case in which an eligible individual resides in a household that could be cost-effectively connected to an available publicly owned treatment works, for the connection of the applicable household to such treatment works.

b. The allowable types of financial assistance under Assistance Listing 66.458 (33 USC 1383(d)) are:

- (1) Making loans for eligible projects;
- (2) Buying or refinancing of debt obligations of municipal, intermunicipal, and interstate agencies incurred after March 7, 1985;
- (3) Guaranteeing or purchasing insurance for local debt obligations;

- (4) Using as a source of revenue or security for CWSRF debt obligations (providing that the net proceeds of the sale of such bonds are deposited in the CWSRF);
 - (5) Guaranteeing loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;
 - (6) To earn interest on fund accounts; and
 - (7) For the reasonable costs of administering the fund and conducting activities under this subchapter, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this subchapter, \$400,000 per year, or one-fifth percent per year of the current valuation of the fund, whichever amount is greatest, plus the amount of any fees collected by the state for such purpose regardless of the source.
- c. Funds awarded under Assistance Listing 66.482 may be used only for projects to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).
2. *CWSRF funds may be used by states for the reasonable costs of administering and managing the CWSRF (33 USC 1383(d)(7)).*
See III.G.3.a, “Matching, Level of Effort, Earmarking – Earmarking.”
 3. *CWSRF funds may be used by states to provide additional subsidization in the form of principal forgiveness, grants, and negative interest loans to municipal, intermunicipal, interstate, or state agencies receiving CWSRF assistance.*

Additional subsidy may be provided to (a) implement a process, material, technique, or technology to address water or energy-efficiency goals; (b) mitigate stormwater runoff; (c) encourage sustainable project planning, design, and construction; or (d) a municipality that meets the state’s affordability criteria or seeks additional subsidization to benefit individual ratepayers in the residential user rate class who would otherwise experience significant financial hardship (33 USC 1383(i)(1)). See III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking.”

B. Allowable Cost/Cost Principals

The cost principles of 2 CFR 200 Subpart E are applicable (as appropriate) to this award. If the state does not have a previously established indirect cost rate, the state will prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII. For CWSRF programmatic eligibilities, state CWSRF programs are required to follow 33 USC 1383(c) for assistance eligibilities.

C. Cash Management

The state may draw cash from EPA through the Automated Standard Application for Payments (ASAP) system for:

1. *Loans* – when the CWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.
2. *Refinance or Purchase of Municipal Debt* – generally, when at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt.
3. *Purchase of Insurance* – when insurance premiums are due.
4. *Guarantees and Security for Bonds* – immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to an amount dedicated for the guarantee or security based on incurred construction costs.
5. *Administrative Expenses* – cash can be drawn based on a schedule that coincides with the rate at which administrative expenses will be incurred (40 CFR section 35.3160).

G. Matching, Level of Effort, Earmarking

1. Matching

States are required to deposit into the CWSRF from state monies, an amount equal to 20 percent of each grant payment. If the state provides a match more than the required amount, the excess balance may be banked toward subsequent match requirements. States generally report the total amount of their matching for a capitalization grant in an annual CWSRF report to EPA. The match is required to be made on or before the time that EPA funds are drawn (40 CFR section 35.3135(b)).

2. Level of Effort

Not Applicable

3. Earmarking

- a. The maximum amount allowable for administering and managing the CWSRF is an amount equal to 4 percent of the cumulative amount of capitalization grant awards received (less any amounts used in previous years to cover administrative expenses), \$400,000, or one-fifth percent of the current valuation of the fund, whichever is the greatest. The valuation

of the fund is defined as the Total Net Position in the most recent year’s audited financial statements for the state CWSRF program. When the administrative expense of the CWSRF exceeds the largest of these amounts, the excess must be paid from sources outside the CWSRF (40 CFR section 35.3120(g)).

- b. The Disaster Relief Appropriations Act (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31) and ASADRA (Pub. L. No. 116-20), includes a requirement to provide subsidies in the amount shown in the table below.

The FY 2019, FY 2020, and FY 2021 appropriations (Pub. L. No. 116-6 and Pub. L. No. 116-94) require 10 percent of the capitalization grant be used for additional subsidy. This additional subsidy can go to any CWSRF borrower; however, only when such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients that were incurred after the date of enactment of the appropriation.

The Clean Water Act also allows additional subsidy if the amount appropriated for capitalization grants to all states in a fiscal year exceeds \$1,000,000,000. The additional subsidy allowed is based on the percentage over \$1,000,000,000 that is appropriated. For FY19, FY20, and FY21 a state may provide up to 30 percent for additional subsidy. This optional amount is in addition to the 10 percent required by the annual appropriation acts. In future years, if the appropriated amount is less than 30 percent of \$1,000,000,000, that percentage would be substituted for the 30 percent. This subsidy can be provided in the form of grants, principal forgiveness, or negative interest as specified in III.A.3, “Activities Allowed or Unallowed.”

Disaster Relief Funds and ASADRA	FY 2019 Funds	FY 2020 Funds	FY 2021 Funds
Not less than 20 percent and not more than 30 percent of the capitalization amount.	Not less than 10 percent and not more than 40 percent of the capitalization grant amount for recipients.	Not less than 10 percent and not more than 40 percent of the capitalization grant amount for eligible recipients. Additionally, the Water Infrastructure Fund Transfer Act (WIFTA) amendment allows states to transfer up to 5 percent of their total allotment of CWSRF capitalization grants	Not less than 10 percent and not more than 40 percent of the capitalization grant amount for eligible recipients.

Disaster Relief Funds and ASADRA	FY 2019 Funds	FY 2020 Funds	FY 2021 Funds
		as of 10/4/2020, to the DWSRF for threats to public health as a result of heightened exposure to lead. These funds are to be provided as subsidy in the form of principal forgiveness, grants, or negative interest). For the ASADRA funds, states are required to use not less than 20 percent, but not more than 30 percent as subsidy in the form of principal forgiveness, grants, or negative interest.	

- c. To the extent that there are sufficient eligible project applications, no less than 10 percent of appropriated funds shall be used for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (Pub. L. No. 116-6 and Pub. L. No. 116-94).

H. Period of Performance

- 1. Grant payments from a capitalization grant shall begin in the quarter in which the grant is awarded and end no later than eight quarters after the grant is awarded, not to exceed 12 quarters from the date of allotment of grant funds to the states (40 CFR section 35.3155(c)).
- 2. Funds made available for disaster relief activities under Assistance Listing 66.482 are available until expended (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).

IV. OTHER INFORMATION

The audit focus is on a state’s CWSRF program rather than individual capitalization grants awarded to states by EPA.

Subrecipients

CWSRF amounts are awarded by EPA to states as grants. The states then makes subawards in the form of loans to its subrecipients. Therefore, in determining the amount of federal funds

expended to be reported on the Schedule of Expenditures of Federal Awards (SEFA), subrecipients receiving CWSRF loans should include project expenditures incurred under these loans during the audit period as provided in 2 CFR section 200.502(a). These are subawards—not direct federal loans—and, therefore, neither 2 CFR sections 200.502(b) nor (d) apply when calculating the amount of federal funds expended.

It also is important to appropriately identify these CWSRF loans as subawards because of the impact on which federal agency is the cognizant or oversight agency. When completing the Form SF-SAC (also referred to as the Data Collection Form for Reporting on Audits of States, Local Governments and Non-profit Organizations, OMB Form 0348-0057), the subrecipient should indicate that a CWSRF loan received from the state is not a direct award by showing an “N” in Part III, Item 6(h).

Equivalency

Equivalency projects/loans are funded with an amount equal to the capitalization grant and reported in the OMB Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System. These projects/loans are considered to be federal projects/loans. To achieve consistency in meeting program requirements and eliminate the possibility of over-reporting information under FFATA, equivalency projects/loans must meet all equivalency requirements: federal cross-cutters, single audit, architectural and engineering (A/E) procurement, disadvantage business enterprise (DBE), and signage.

While any of the sources of funds in the CWSRF may be used for equivalency projects/loans, it should be understood that these funds would be considered federal funds and that all disbursements for equivalency projects/loans must be entered into SEFA.