

Assistance for Disadvantaged Communities

Section 1452 (d) changed in 2009 to require states to provide a minimum of 20 percent additional loan subsidies in the form of negative interest, grants or principal forgiveness to benefit communities meeting the State's definition of "disadvantaged". Since then, there has been a variety of changes as to how much subsidization has been required each year or that may have been permitted with a ceiling percentage as high as 50 percent of the annual DWSRF capitalization award amount. The 2024 allotments from the Consolidated Appropriations Act of 2024 now mandate that the states use at least twelve percent but not more than 35 percent for additional subsidization of the 2024 allotment of the DWSRF capitalization grant. Additional authority was authorized in the America's Water Infrastructure Act (AWIA) of 2018. In AWIA's authority, States must use 14 percent of the funds made available in the 2024 DWSRF capitalization grant to provide additional subsidization to eligible disadvantaged recipients. Therefore, a minimum of 26 percent to a ceiling amount of 49 percent will be included with the 2024 loans closed to provide subsidization to any DWSRF eligible applicant based on the definition adopted the State's definition. DDW will comply with the programmatic conditions of the grant award to match the 2024 subsidization requirements.

The BIL mandates that 49% of funds provided through the DWSRF General Supplemental Funding and DWSRF Lead Service Line Replacement Funding must be provided as grants and forgivable loans to disadvantaged communities. The BIL also requires that not less than 25% 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 with the remaining 75% of funds provided as grants or forgivable loans to qualified applicants. The SDWA requires states to establish a definition of disadvantaged communities that can receive this additional subsidization.

The Board defines a disadvantaged community as a community located in an area: 1. that has a median adjusted gross income that is less than or equal to 80% of the State's median adjusted gross income (MAGI) or 2. where the estimated annual cost (including loan repayment costs) of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. The MAGI is determined by the Utah State Tax Commission (USTC) from federal individual income tax returns excluding zero exemption returns. The current metrics used for defining disadvantaged communities do not capture differences in affordability within a community or service area. To better capture these differences, the disadvantaged community criteria as applied to Lead Service Line Replacement and Emerging Contaminant funding have been expanded to include zip codes or census tracts with a local MAGI that is less than 80% of the State's MAGI as well as that meet or exceed 80% percentile of the USEPA demographic index. Expanding the criteria in this way not only ensures that disadvantaged areas within a community or service area are not overlooked or disqualified from receiving needed assistance, but it also prioritizes funding for these communities. Communities meeting the criteria are eligible to receive grant funding or forgivable loans in accordance with BIL requirements. If, in the judgment of the Board, the USTC data is insufficient, the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city, or when the water system claims that the MAGI (incomes) of its users is lower than the MAGI (incomes) of the larger community covered by the USTC data).

The amount and type of financial assistance offered by the Board will be based on the criteria shown in UAC R309-705-6 (2). Disadvantaged communities may receive zero-percent loans, negative

interest rate loans, principal-forgiveness loans, or grants. Terms for each method of financial assistance shall be determined by a Board resolution.

The Board has not set any predetermined amount of DWSRF funds that may be used for principal forgiveness to disadvantaged communities. It is the Board's intention to authorize additional subsidization only to communities that meet the "disadvantaged criteria."

Costs Incurred After Application and Prior to Execution of the Loan Agreement

Eligible project costs incurred after application to the Board and prior to execution of the loan agreement are eligible for reimbursement. Reimbursement will only be made after the loan closing.

Municipal Bond Legal Fees

The Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of a recognized municipal bond counsel selected by the Board (UAC R309-705-8 (2)). The loan recipient is responsible for the legal costs. Legal costs may be paid from the loan proceeds.

Capacity Development Requirements

Eligible Systems - The SDWA allows DWSRF assistance to publicly and privately owned community water systems and nonprofit, non-community water systems other than systems owned by Federal agencies. Federal Regulations also set forth certain circumstances under which systems that will become community water systems upon completion of a project may be eligible for assistance. UAC R309-705 Financial Assistance: Federal Drinking Water Project Revolving Loan Program (effective July 1, 2011) establishes criteria for financial assistance to public drinking water systems in accordance with a federal grant 42 U.S.C. 300j et seq., Federal Safe Drinking Water Act. The SDWA requires that loan recipients must demonstrate the technical, managerial, and financial capacity (TMF) to comply with the SDWA and not be in significant noncompliance with any requirement of a national primary drinking water standard or variance. The State will assess TMF and compliance in accordance with UAC R309-800 Capacity Development Program after loan applications have been received. Those systems lacking in TMF or compliance may still be eligible for a loan if the loan will address the non-compliance or the system agrees to undertake feasible and appropriate changes in operations. In accordance with the AWIA changes, DDW will include in the state capacity development triennial report to the Governor a description of how the state will implement procedures to encourage the development of technical, managerial, and financial capacity, and an asset management plan program with provisions of technical assistance. DDW intends to encourage water systems to implement asset management plans that include best practices in any training or technical assistance into the division's capacity development methodologies.

Environmental Reviews and Categorical Exclusions

The State Environmental Review Process (SERP) is described in the Operating Agreement.

The Grantee, the State of Utah, may elect to partition an environmental review or Categorical Exclusion (Cat Ex) from environmental review. The State will follow the procedures listed below to evaluate if partitioning a project from environmental review is appropriate.