



NEWEA
WORKING FOR WATER QUALITY



Clean Water and Drinking Water State Revolving Funds, Water Infrastructure Financing and Innovation Act, the Bipartisan Infrastructure Law, and the Build America, Buy America Act



U.S. EPA
Kelly Tucker
Forrest Petrich
Leslie Corcelli

The Clean Water State Revolving Fund and the Bipartisan Infrastructure Law

2024 NEWEA Annual Conference
January 23, 2024

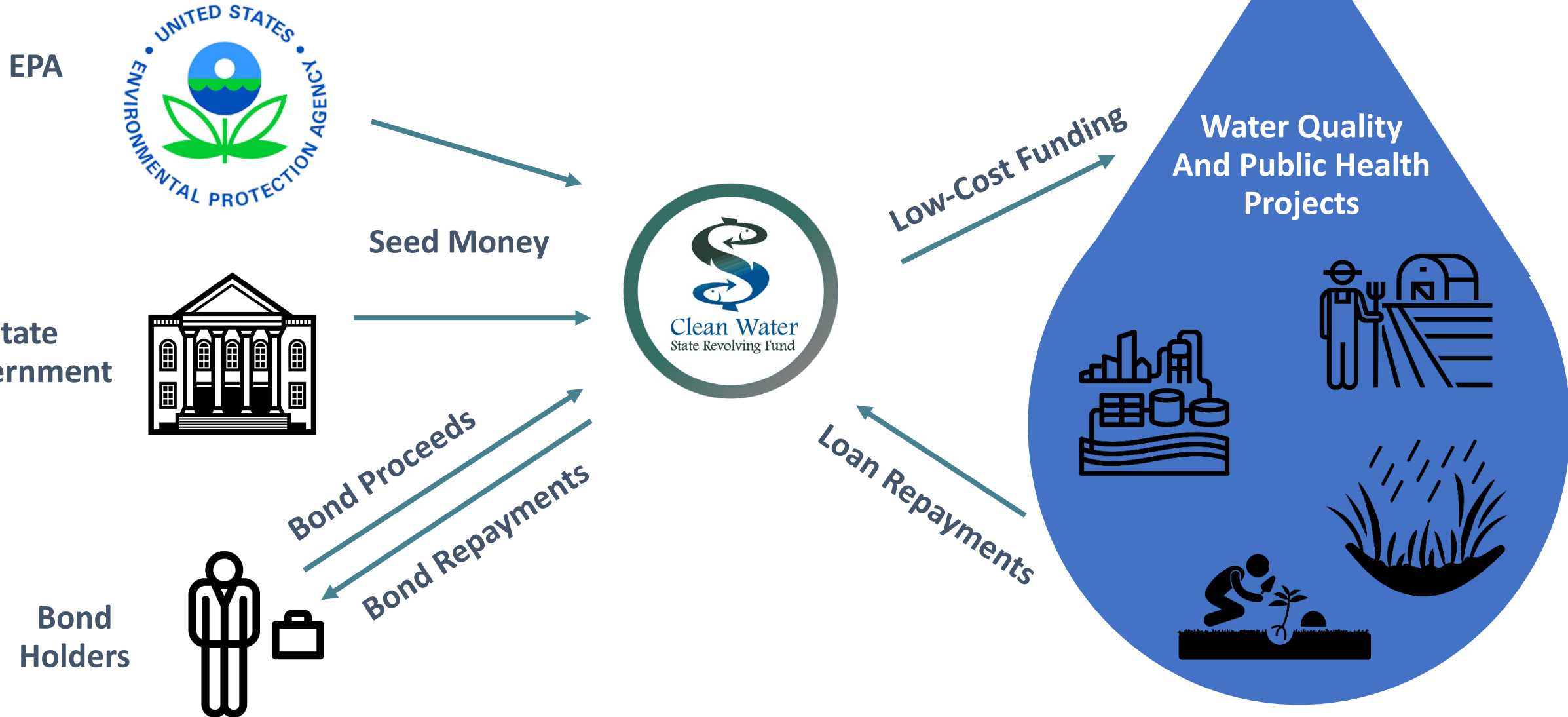


Clean Water State Revolving Fund

Overview

- ◆ Federal/state partnerships designed to create, in each state, a perpetual source of financing for wastewater and stormwater infrastructure
- ◆ Combines federal and state funds to provide **low-cost financing** for water quality improvement projects
- ◆ State implemented and operated
- ◆ Flexibility in assistance provided
 - ◆ **Type of assistance:** loans, refinancing, loan guarantees, technical assistance
- ◆ Availability of special financing terms to disadvantaged communities to help address equity and affordability

Clean Water State Revolving Fund Overview



Terms: Up to **30 years**

or useful life of the project, whichever is less



Below-market rates: 1.2% average interest rate in 2020 (compared to market rate 2.7%)



May also include additional subsidies (e.g., loan forgiveness and grants)

Repayment starts **one year** after project completion

BILL

Due Date:

1 year

Who is Eligible to Use the CWSRF?

CWSRF-eligible entities are dependent upon project type:

- ◆ Municipalities, intermunicipal, interstate, or State agencies
- ◆ Nonprofit entities*
- ◆ Private, for profit entities*
- ◆ Watershed groups*
- ◆ Community groups*
- ◆ Homeowners associations*
- ◆ Individuals*
- ◆ And more...

**Some states do not fund private systems/private entities.*

CWSRF Statutory Funding Eligibilities

- ◆ 603(c)(1) Construction of publicly owned treatment works (POTW)
- ◆ 603(c)(2) Implementation of a nonpoint source management program
- ◆ 603(c)(3) Implementation of a national estuary program Comprehensive Conservation and Management Plan
- ◆ 603(c)(4) Decentralized systems
- ◆ 603(c)(5) Stormwater management
- ◆ 603(c)(6) Projects that reduce the demand for POTW capacity through water conservation, efficiency, and reuse
- ◆ 603(c)(7) Watershed pilot projects
- ◆ 603(c)(8) Projects that reduce the energy consumption needs for POTWs
- ◆ 603(c)(9) Reuse of wastewater, stormwater, or subsurface drainage water
- ◆ 603(c)(10) Security measures at POTWs
- ◆ 603(c)(11) Technical assistance to small and medium POTWs
- ◆ 603(c)(12) Assistance to a qualified nonprofit entity to provide assistance to an eligible individual for the repair or replacement of household decentralized treatment systems

What Type of Projects Can be Funded by the CWSRF?

- ◆ Centralized Wastewater Treatment
- ◆ Energy Conservation
- ◆ Water Conservation
- ◆ Stormwater
- ◆ Agricultural Best Management Practices
- ◆ Groundwater
- ◆ Resource Extraction
- ◆ Planning/Assessments and Monitoring
- ◆ Landfills
- ◆ Habitat Restoration
- ◆ Desalination
- ◆ Decentralized Wastewater Treatment
- ◆ Surface Water
- ◆ Contaminated Sites

Access our *Eligibility Handbook*, which includes example projects:

https://www.epa.gov/sites/default/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf



Bipartisan Infrastructure Law

- Signed by President Biden on November 15, 2021.
- Historic investment in key programs and initiatives implemented by the U.S. Environmental Protection Agency to build safer, healthier, cleaner communities.
- Includes \$50 billion to the EPA to strengthen the nation's drinking water and wastewater systems – the single largest investment in water that the federal government has ever made.
- Approximately \$43.4B of this funding through the existing CWSRFs and DWSRFs.

Clean Water SRF

Funding in the Bipartisan Infrastructure Law

- ◆ EPA is making \$12,713,000,000 in **additional** capitalization grants available to the state CWSRFs over five years (FY22 – FY26).
- ◆ Most of this money may fund any project eligible under the CWSRF; some funding is targeted towards projects focused on “emerging contaminants.”
- ◆ **States have the authority to waive repayment on some of this new funding** (e.g., forgive some or all of the loan’s principal or provide grants).

Clean Water for Communities	\$12.7 billion
General: Clean Water State Revolving Funds	\$11.7 billion
Addressing Emerging Contaminants: Clean Water SRFs	\$1 billion

Clean Water SRF

Emerging Contaminants Fund Overview

- ◆ New appropriation under the Bipartisan Infrastructure Law (BIL), enacted on November 15, 2021
- ◆ Appropriates **\$1 billion over five years** to address emerging contaminants
 - ◆ FFY 2022: \$100 M
 - ◆ FFY 2023 to FFY 2026: \$225 M each year
- ◆ Funding issued to states as CWSRF Emerging Contaminants Capitalization Grant based on the current CWSRF distribution percentages
- ◆ All funds are to be awarded to funding applicants as **100% forgivable loans or grants**

CWSRF Emerging Contaminants Fund

What are emerging contaminants?

- ◆ Examples: PFAS, antimicrobial resistant bacteria, 6PPD-quinone (from tires), microplastics, pharmaceuticals and personal care products
- ◆ Contaminants with national water quality criteria, except for PFAS, are not considered emerging contaminants.
 - ◆ Includes nutrients (e.g., ammonia, nitrogen, and phosphorus), certain organics, and certain metals.



Definition only for the purpose of CWSRF financing, not DWSRF.

See Appendix B of EPA's March 2022 memo:
https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf

CWSRF Emerging Contaminants Fund

Eligibilities

◆ **Projects or activities must:**

- ◆ Meet one of the 12 eligibilities outlined in section 603(c) of the Clean Water Act (CWA) – [See CWSRF eligibilities](#)
- ◆ Address **identified** emerging contaminants

◆ **Funds can be used for the:**

- ◆ **Portion** of the project specific to addressing emerging contaminants
- ◆ **Planning & Design** efforts to develop an eligible capital project that addresses emerging contaminants
- ◆ **Construction and capital costs** of building an eligible project that addresses emerging contaminants

CWSRF Emerging Contaminants Fund

Project Ideas

- ◆ **Monitoring for the specific purpose of project development:** planning, design, and construction
 - ◆ Water quality monitoring activities (including monitoring of PFAS associated with NPDES permit or pretreatment requirements) at POTWs are generally **not** eligible.
- ◆ **Wastewater treatment facilities:** technology installation to treat for PFAS and other emerging contaminants in discharge or biosolids



Washington State Department of Ecology. 2015. Stormwater Sampling Manual: A guide for the Industrial Stormwater General Permit. Washington State Department of Ecology, Olympia, WA. 41 p. Publication No. 15-03-044.

CWSRF Emerging Contaminants Fund

Project Ideas

- ◆ **Landfills:** Landfill closure (e.g., capping); runoff and leachate collection and treatment that will reduce PFAS runoff



- ◆ **Water reuse:** advanced treatment (e.g., reverse osmosis, granulated activated carbon, or ion exchange) to remove PFAS or other emerging contaminants

CWSRF Emerging Contaminants Fund

Project Ideas

- ◆ **Stormwater:** trap and/or treat emerging contaminants in runoff prior to reaching waterbodies or instream treatment or removal
- ◆ **Surface Water Protection and Restoration:** equipment for the physical or chemical removal of Harmful Algal Blooms or projects that skim surface water to remove microplastics

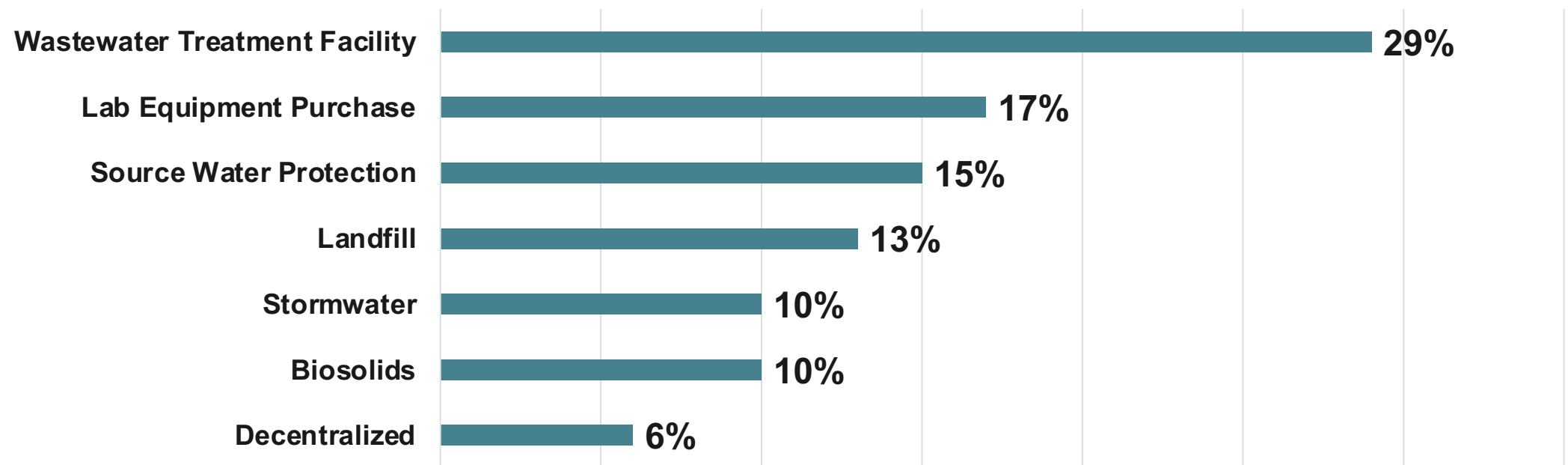


FFY22 CWSRF Emerging Contaminants

Project Types

There are 52 proposed emerging contaminants projects across states and Puerto Rico.

Percent of Emerging Contaminants Project Types

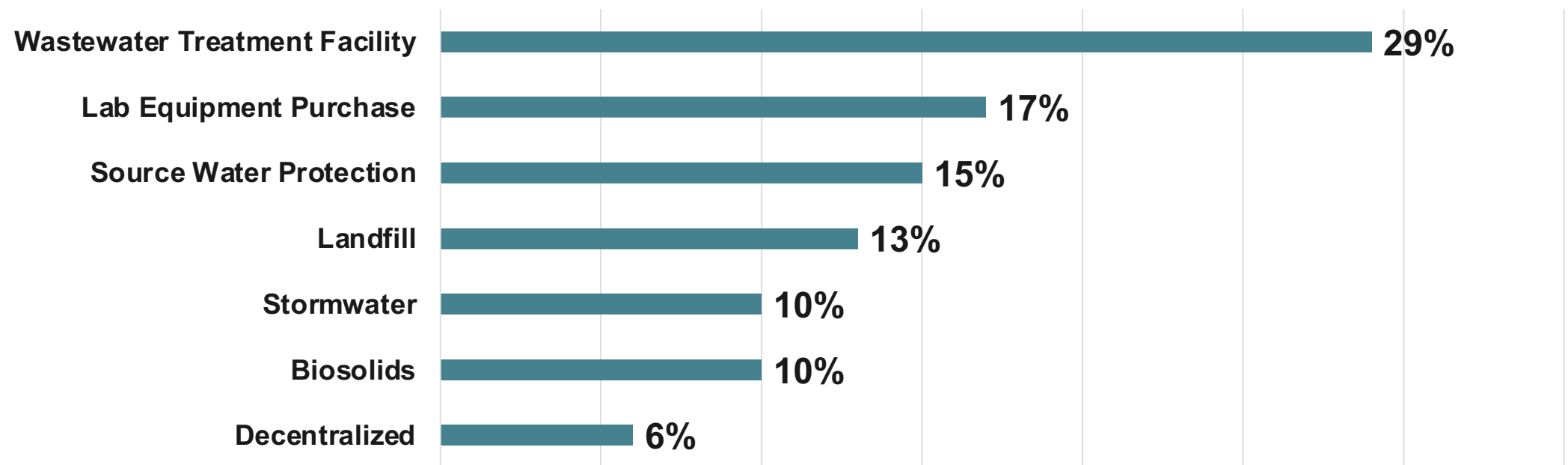


FFY22 CWSRF Emerging Contaminants

Project Types

There are 52 proposed emerging contaminants projects across states and Puerto Rico.

Percent of Emerging Contaminants Project Types



New England CWSRF EC Projects

- ◆ All Projects focused on PFAS
- ◆ 1 transfer of Clean Water SRF funds to Drinking Water SRF
- ◆ **Project Types:**
 - ◆ Lab equipment purchase
 - ◆ Wastewater and leachate characterization to develop engineering reports
 - ◆ Landfill leachate pilot study
 - ◆ Wastewater treatment plant construction & improvements



CWSRF Emerging Contaminants Resources

- ◆ **CWSRF eligibilities:** https://www.epa.gov/sites/default/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf
- ◆ **CWSRF emerging contaminants webinar recording, webinar Q&As and FAQs are posted on the EPA website:**
<https://www.epa.gov/dwsrf/bipartisan-infrastructure-law-srf-memorandum>
- ◆ **Case studies:** <https://www.epa.gov/cwsrf/clean-water-state-revolving-fund-emerging-contaminants>
- ◆ **For additional questions contact:** EPA CWSRF – Emerging Contaminants (cwsrfEC@epa.gov)

CWSRF and BIL Information

- ◆ **CWSRF:** <https://www.epa.gov/cwsrf>
 - ◆ [State CWSRF contacts](#)
- ◆ **BIL:** <https://www.epa.gov/infrastructure>
 - ◆ <https://www.epa.gov/dwsrf/bipartisan-infrastructure-law-srf-memorandum>



Clean Water
State Revolving Fund

Please reach out with
any questions!

Kelly Tucker
Tucker.Kelly@epa.gov



WIFIA
PROGRAM

**WHY FINANCE WITH A
WIFIA LOAN?**

2024 NEWEA CONFERENCE



MISSION STATEMENT

The Water Infrastructure Finance and Innovation Act (WIFIA) program accelerates investment in our nation's water and wastewater infrastructure by providing long-term, low-cost, supplemental credit assistance under customized terms to creditworthy water and wastewater projects of national and regional significance.



PROGRAM FEATURES

\$20
MIL

Minimum project size for large communities

5
YEARS

Maximum time that repayment may be deferred after substantial completion of the project

\$5
MIL

Minimum project size for small communities (population of 25,000 or less)



Interest rate will be equal to or greater than the U.S. Treasury rate of a similar maturity

49%

Maximum portion of eligible project costs that WIFIA can fund



Broad eligibility allows for wide variety of borrowers and projects, plus special program for SRF borrowers (SWIFIA)

35
YEARS

Maximum final maturity date from substantial completion



NEPA, Davis-Bacon, American Iron and Steel, Build America, Buy America, and all federal cross-cutter provisions apply



ELIGIBILITY

- WIFIA offers broad eligibility and can provide financing to a variety of credit-worthy borrowers, including local and tribal governments, state infrastructure financing authorities, and public-private partnerships, among others
- WIFIA can fund water infrastructure projects that support clean and safe water access and help communities address a variety of challenges, including regulatory compliance, water quality issues, drought or flooding, and aging infrastructure needs
- Eligible activities include project planning, design, development, and construction, land or equipment acquisition, a variety of carrying costs during construction, and financing-related costs



FINANCING AVAILABLE

Each year, Congress appropriates funds to WIFIA

- This allows the WIFIA program to have money available on an ongoing basis
- WIFIA can finance up to 49% of the anticipated project costs **and is offering up to 80% of anticipated project costs for small communities**



LOAN FEATURES AND BENEFITS

FAVORABLE RATES	<ul style="list-style-type: none">• Fixed interest rate locked in at closing• Interest does not accrue until loan is drawn• Borrower credit does not impact interest rate
GENEROUS TERMS	<ul style="list-style-type: none">• No penalty for prepayment• Sculpted repayment schedule to grow payments over time• WIFIA can take a subordinate lien position
FLEXIBLE FINANCING	<ul style="list-style-type: none">• Loan closing in as little as 4 months, or faster for repeat borrowers• Bespoke loan agreements that can fit into each borrower's existing indenture structure or be stand-alone issuances• Pairs well with other forms of funding and financing
BUNDLING FEATURES	<ul style="list-style-type: none">• Financing available for a combination of projects under one loan• Upfront commitment available for multiple projects taking place over time via a Master Agreement
LOAN MANAGEMENT	<ul style="list-style-type: none">• Ability to request monthly disbursements• Disbursements processed within 15 days of request• Dedicated loan management team responsive to borrower needs



WIFIA LOAN EXAMPLES

120 loans closed totaling \$19 billion in credit assistance to help finance \$43 billion for water infrastructure projects

BORROWER	LOAN AMOUNT	INTEREST RATE	TRANSACTION INFO
ORANGE COUNTY WATER DISTRICT	\$135M	3.06% at closing in 2018; 1.04% at reset in 2020	The WIFIA loan is subordinate to other debt with a springing lien and gives the borrower the optional ability to use WIFIA to retire construction financing
POLK REGIONAL WATER COOPERATIVE	\$306M	4.02%	WIFIA customized loan features facilitated financing for cooperative comprised of 16 local governments to implement a regional water planning initiative
CITY OF CORTLAND	\$16M	1.08%	Small community borrower that used WIFIA as a supplement to limited state financing
CITY OF PHILADELPHIA	\$19.8M	3.59%	Took advantage of a master agreement to secure a large upfront commitment (\$340M) and close multiple loans under the agreement at different times over ~5 years



LOAN PROCESS – PROJECT SELECTION



- Prospective borrower submits LOI
- EPA completes LOI evaluation
- EPA invites prospective borrower to apply
- EPA provides pre-application support and technical assistance, as needed

LOAN PROCESS – PROJECT APPROVAL



- Applicant submits complete application
- EPA conducts credit, legal, and technical review of loan application
- EPA conducts environmental review, makes NEPA determination, and documents environmental cross-cutting authority compliance
- EPA and applicant negotiate mutually agreeable loan terms and loan agreement
- EPA and applicant seek necessary approvals and conduct loan closing

TIMEFRAME FACTORS

Loan closing timeframes are predictable and within a borrower's control

Faster Loan Closing	Longer Loan Closing
Projects for WIFIA loan are established and at 30-90% design	Projects not yet well defined
Borrower is highly rated and familiar with issuing debt	Revenue stream is riskier and requires substantial evaluation
Environmental studies and consultations complete or currently underway	Environmental impact of construction has not yet been determined and requires further studies
Responsive borrower	Borrower requires significant third-party approvals/agreements outside of the loan process
Borrower has dedicated person(s) to spearhead the WIFIA process and make decisions	Legal terms are extensively negotiated



LOAN PROCESS – PROJECT MONITORING



- Borrower responsible for periodic reporting to EPA
- EPA performs construction monitoring site visits
- EPA processes disbursements to borrowers
- EPA conducts compliance management/monitoring and credit risk monitoring



WHAT'S NEW

PROJECT SELECTION

WIFIA and SWIFIA Letters of Interest (LOI) may be submitted at any time!

- Rolling selection provides:
 - ✓ Year-round access to WIFIA funding
 - ✓ Accelerated selection decisions allows for real-time financial decision-making by prospective borrowers
 - ✓ WIFIA LOI submission can be timed with cycles of other funding sources
 - ✓ WIFIA can provide technical assistance to prospective borrowers that need feedback on LOI package

Submission of an LOI is easy via EPA's SharePoint site!

- To request access, simply contact WIFIA@EPA.GOV



BUILD AMERICA, BUY AMERICA

- Bipartisan Infrastructure Law (BIL) (2021) includes new Build America, Buy America (BABA) requirements for all infrastructure projects
- This requires that all projects receiving federal funding (including WIFIA) use iron, steel, manufactured products, and construction materials produced in the United States
- To assist with the transition to implementation, WIFIA has finalized a programmatic waiver for all projects that began planning and/or design activities prior to May 2022
- The programmatic waiver defers BABA requirements and offers a practical tool for borrowers that have initiated project planning and design to continue doing so for those projects. WIFIA's AIS requirements will still apply
- BABA Implementation Procedures for EPA Office of Water programs can be found on [EPA's BABA webpage](#)



MULTIPLE PROJECTS UNDER ONE LOAN

WIFIA loans can fund multiple projects under one loan under the following conditions:

- A common purpose
- A similar construction time frame (generally within 5 years)
- A common security pledge
- The projects are submitted under one Letter of Interest and application



MASTER AGREEMENT

What is a Master Agreement?

- A Master Agreement is an umbrella contract between EPA and a borrower, providing an upfront commitment of capital and a common set of legal and financial terms under which a borrower can close multiple WIFIA loans over time

Benefits

- Facilitates bundling of staggered projects
- Ensures access to timely low-cost capital
- Fast turnaround for subsequent loans



INTEREST RATE RESET

WIFIA offers one-time interest rate adjustments for loans which have not drawn funds

- Starting in 2020, the WIFIA program updated 7 loans with lower interest rates, saving these borrowers an additional \$1.5 billion
- Interest rate adjustments do not change the terms and conditions and loan amount

Lower interest rates save borrowers money, allowing them to:

- Keep rates lower for longer and not burden customers facing harsh economic challenges
- Continue to invest in long-term viability of their infrastructure and maintain existing project schedules
- Redirect millions of dollars per month towards basic operational, repair, and workforce needs



SMALL BORROWERS

WIFIA financing has many benefits for small borrowers:

- Ability to cover up to 80% of eligible project costs (typically 49%)
- Smaller minimum project size (\$5M vs. \$20M)
- Lower application fees (\$25,000 vs. \$100,000)
- Opportunities for technical assistance





WIFIA & SRF CO-FUNDED PROJECTS

SPRINGFIELD WATER AND SEWER COMMISSION, MA

WATER, WASTEWATER INFRASTRUCTURE RENEWAL

- Received a \$250M WIFIA loan and \$127M in SRF assistance for 30 projects on the Commission's Capital Improvement Plan
- Rehabilitates the hydropower facility to create renewable energy to power system facilities
- Provides safe drinking water and increases system reliability by rehabilitating aging infrastructure
- Improves water quality of the nearby waterways by reducing sewer overflows
- Accelerates water infrastructure investment by an estimated 15 years



NARRAGANSETT BAY COMMISSION, RI

BUCKLIN POINT RESILIENCY IMPROVEMENTS

- Received \$190M WIFIA loan and over \$90M in SRF assistance
- Upgrades the Bucklin Point Wastewater Treatment Facility and the associated combined sewer system
- Protects water quality by reducing the amount of combined sewer overflow discharged into Narragansett Bay
- Will help achieve an 80 percent reduction in shellfish bed closures
- Contributes to compliance with the Combined Sewer Overflow Consent Agreement with the Rhode Island Department of Environmental Management





CONTACT INFORMATION AND RESOURCES

MEETING WITH WIFIA PROGRAM STAFF

EPA is happy to meet with all prospective borrowers interested in discussing the program prior to submission of a letter of interest

- Send requests to wifia@epa.gov
- Meetings may be virtual or in-person



RESOURCES

General Information

<https://www.epa.gov/wifia/about-wifia>

- What is WIFIA?
- What is SWIFIA?
- WIFIA Benefits
- Laws and Regulations

Application Materials

<https://www.epa.gov/wifia/wifia-application-materials>

- Letter of Interest form
- Letter of Interest checklist
- Sample Letter of Interest
- Sample financial pro forma

Program Resources

<https://www.epa.gov/wifia/wifia-program-resources>

- Template Term Sheet
- Federal Compliance Requirements
- Program Handbook
- FAQs

Learn More

<https://www.epa.gov/wifia/learn-more-about-wifia>

- Annual Report
- Videos
- Presentations and Factsheets



CONTACT US

Website: www.epa.gov/wifia

Sign-up to receive announcements
about the WIFIA program at
<https://tinyurl.com/wifianews>

Have questions? Want to meet with
WIFIA staff?

Contact us at wifia@epa.gov



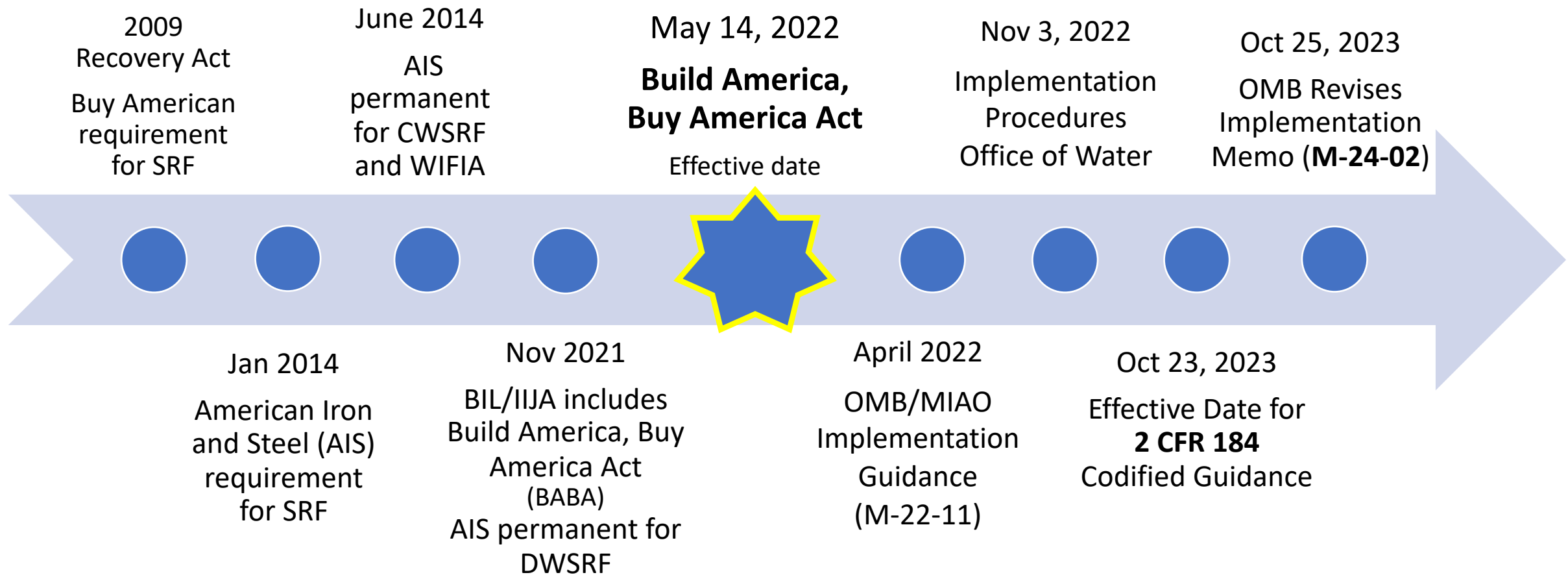


BUILD AMERICA, BUY AMERICA ACT AND THE AMERICAN IRON AND STEEL REQUIREMENT



Clean Water
State Revolving Fund

EPA WATER – DOMESTIC PREFERENCE TIMELINE



AIS: A REFRESHER



What is AIS?

"American Iron and Steel"(AIS) requires the use of iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a public water system or treatment works

- Applies to projects for *public water systems* (DWSRF), *treatment works* (CWSRF), and all WIFIA projects



AIS: What is an Iron/Steel Product?

^{YES} Is the product “primarily” iron or steel?

^{YES} Is the product a “listed” product?

^{YES} Is the product “permanently incorporated” in the project?

If the product meets all the criteria above ^{YES} then it is an iron and steel product under the AIS requirement and must be “produced in the United States”.



AIS Basics: Primarily Iron/Steel

- Products greater than 50% iron or steel, measured by material costs only (not labor, overhead, shipping, etc.).
- Who determines if a product is primarily iron and steel?
 - Product manufacturers certify that their product is AIS compliant or does not need to meet AIS requirements.
- How calculate material cost?
 - Fire hydrant example:
 - Iron or steel components – bonnet, body and shoe
 - Other material costs – stem, coupling, valve, seals, and other non-iron or steel internal workings
 - Assembly of the internal workings into the hydrant body would not be included in cost calculation





AIS Basics: Covered Products

- Lined or unlined pipes or fittings
- Manhole Covers
- Municipal Castings*
- Hydrants
- Tanks
- Flanges
- Pipe clamps and restraints
- Valves
- Structural steel
- Reinforced precast concrete*
- Construction materials*

AIS Listed Products: Reinforced Precast Concrete

- Typically, not primarily iron and steel by material cost, but is a listed product ... always an AIS product
- Reinforcing bar and wire must be domestic
- Casting of concrete must occur domestically
- Raw materials (e.g., cement, additives) do not need to be domestic



AIS Listed Products:

- Municipal Castings
- Manhole Covers



AIS Listed Products: Construction Materials (FERROUS)

- Iron or Steel articles, materials, or supplies, not including mechanical and/or electrical components, equipment and systems
- Examples:
 - Concrete reinforcing bar, rebar, wire rod
 - Fasteners
 - Framing, joists, trusses
 - Decking, grating, railings, stairs, ladders
 - Fencing, doors, door hardware



AIS Basics: Permanent Products

- Products that are permanently incorporated into the project, including:
 - Spare parts or backup equipment
 - Iron or Steel materials buried or left in place (intentional or not)
 - Examples: sheet piling, bypass valves, drains, etc.
- Temporary, non-permanent item examples:
 - Trench boxes, forms, scaffolding, etc.



AIS Basics: What is “Produced in the US?”

- Manufacturing and processing of iron or steel must occur in the U.S, including:
 - Initial Melting, Refining, Forming, Rolling, Drawing, Finishing, Fabricating and Assembly
- All processes must take place in the U.S., except:
 - Steel additives refining
 - External coating surface of iron/steel components (rare)

AIS: HOW CAN PROJECTS COMPLY?

1. Certification Letter

- Letter asserting that all manufacturing processes for the purchased product occurred in the U.S.

2. Waiver

- EPA has authority to waive the AIS requirement and to issue waivers for a case or category of cases

ALS Basics: Certification Letter = 5 key elements

1. What is the product
 - List product(s) delivered to the project site
2. Where was it made
 - Location(s) of the foundry/mill/factory where the product was manufactured (City and State)
3. To whom was it delivered
 - Name of the project and/or jurisdiction delivered
4. Signature of company representative
 - Certifying official on company letterhead
5. Reference ALS requirements
 - OK if lists more (USDA, DOT, FHA, etc.), but ALS required

AIS: Project/Product Specific Waivers (BABA in the future)

- Availability Waiver
 - Most commonly occurring waiver
 - But, common in small percentage of all AIS projects ...more expected for BABA
 - Product(s) is not available or will not be available in a reasonable time
- Public Interest Waiver
 - High Bar (Executive Order 14005, Jan 2021)
 - Evaluation can be complicated, longer decision time
- Cost Waiver
 - Increases the total project cost more than 25%
 - To date, only one AIS cost waiver has been approved ...more expected for BABA

AIS Key National (aka General Applicability) Waivers:

De Minimis

- Allows SRF project a small percentage of incidental products of unknown or non-domestic origin
 - 5% total material cost
 - 1% max for any single item
- Users of the de minimis waiver should maintain documentation of all the de minimis items in a project

Minor Components

- Allows the product manufacturer to include non-domestic, minor iron/steel components in AIS-compliant products (up to 5% of material cost of the product)
 - Example: a valve with stainless steel pins and springs could make use of the waiver.

BABA: What is BABA?



BUILD AMERICA, BUY AMERICA (BABA) ACT

- Included in the Infrastructure Investment and Jobs Act
 - Public Law Number 117-58
 - Title IX, Subtitle A, Part I – Buy America Sourcing Requirements
 - Sections 70911-70917
- Signed November 15, 2021
- Effective date 180 days after enactment: May 14, 2022
- <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>

WHAT IS BABA?

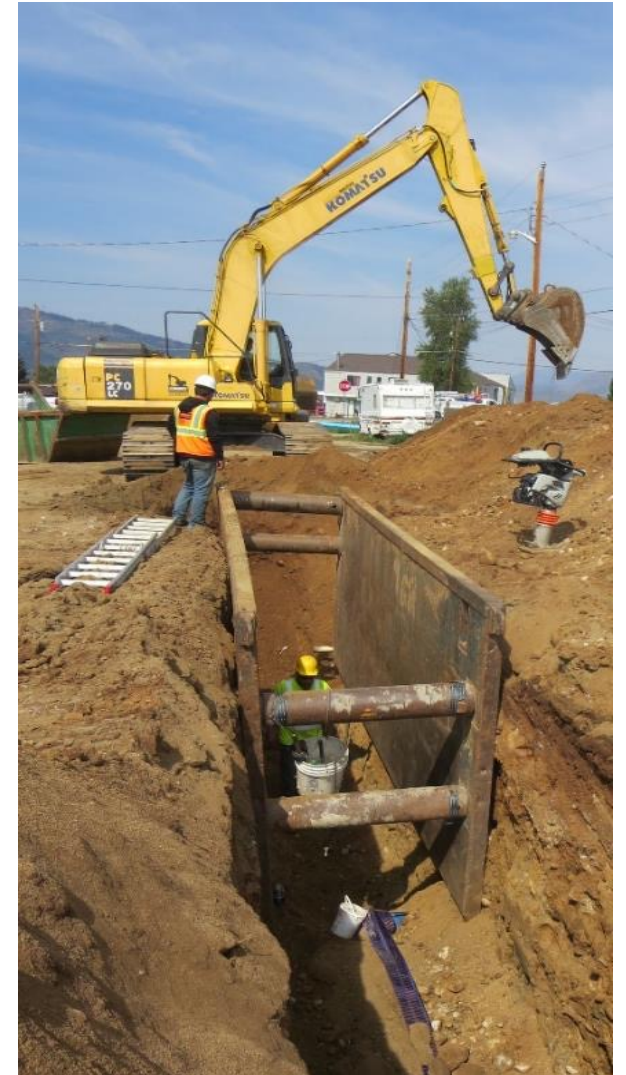
- “[N]one of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”
- “Project” means: Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
- “Infrastructure” means anything fixed, permanent, and that serves the public interest.

WHAT'S NEW WITH BABA?

- OW Implementation Memo (documentation refresher)
- New: OMB Codified Guidance (2 CFR 184)
- Revised: OMB Implementation Memo (M-24-02)
- Amended SRF Design Planning Waiver
- Request for Information re: Water Products

BABA Covered Items

- Iron and steel + manufactured products + construction materials (non-ferrous)
- Items classified into only ONE of the three categories
- Applies to items consumed in, incorporated into or affixed to a project (aka permanently incorporated)
 - Similar to AIS
 - Scaffolding, Trench Boxes, Sheet Piling removed - Excluded



BABA: Iron and Steel

- Same as AIS
- Items that are primarily / predominantly iron or steel, unless another standard applies under law or regulation
- All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the U.S.
 - Coatings change minor difference to AIS



BABA: Manufactured Products

- Final Manufacturing in the United States
- Cost of components that are mined, produced, or manufactured in the U.S. is greater than 55 percent of the total cost of all components of the manufactured product
 - Additional guidance explained in later slides



BABA: Construction Materials

- Includes:
 - **Non-ferrous** metals
 - Plastic and polymer-based products (including PVC, composite building materials, and **drop cable** aka fiber optic cables)
 - Glass (including optic glass)
 - Lumber
 - Drywall
 - **Engineered Wood**
- Excludes:
 - Items made primarily of iron or steel
 - Manufactured products
 - Cement and cementitious materials
 - Aggregates such as stone, sand, or gravel
 - Aggregate binding agents/additives
 - Flora (plantings, landscaping)

OMB – CODIFIED GUIDANCE – 2 CFR 184

- Published August 23, 2023
- Effective October 23, 2023
- Final guidance for manufactured products component cost test, product categorization, and non-ferrous construction materials definitions
- Includes definitions of manufactured products and guidance on determining the cost of components

OMB MADE IN AMERICA – 2 CFR 184 HIGHLIGHTS

- Key text of guidance begins at 88 FR 57787
- Section 184.3 - definitions of key terms, including:
 - Manufactured Product means –
"(1) Articles, materials, or supplies that have been:
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies."

OMB MIAO – 2 CFR 184 HIGHLIGHTS, CONT.

- Component –
"an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: (i) a manufactured product; or, where applicable, (ii) an iron or steel product."
- Manufacturer –
"the entity that performs the final manufacturing process that produces a manufactured product."
- Produced in the United States (Manufactured Product) –
"(i) The product was manufactured in the United States; and
(ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product."

OMB MIAO – 2 CFR 184 HIGHLIGHTS, CONT.

- Construction Material Clarifications:
 - Engineered wood – construction material
 - Drop cable = fiber optic cable – construction material
 - Bricks – manufactured products
 - Minor Additions – each agency decides amount allowed in "construction materials"
 - For (non-ferrous) Construction Materials only
 - Minor additions of articles, materials, supplies, or binding agents (coatings, paint, etc.)
 - Paint, coatings, brick, etc. added to project on site – manufactured products
- Kit = a manufactured product
 - Kits are from a manufacturer or supplier that have a unified function and are assembled on site
 - Manufacturing product component test applies (55%)

OMB MIAO – 2 CFR 184 HIGHLIGHTS, CONT.

§184.5 Determining the cost of components for manufactured products

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. **Cost of components does not include any costs associated with the manufacture of the manufactured product.**

OMB MIAO – FINAL 2 CFR 18, CONT. - CONSTRUCTION MATERIALS

Construction material	“Produced in the U.S.” means all manufacturing processes occurred in the U.S.
Non-ferrous metals	From initial smelting or melting through final shaping, coating, and assembly
Plastic and polymer-based products	From initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form
Glass	From initial batching and melting of raw materials through annealing, cooling, and cutting
Fiber optic cable	From the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States.
Optical fiber	From the initial preform fabrication stage through the completion of the draw
Lumber	From initial debarking through treatment and planing
Drywall	From initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels
Engineered wood	From the initial combination of constituent materials until the wood product is in its final form

HOW CAN PRODUCT COMPLIANCE BE DEMONSTRATED?

Manufacturer's documentation for the product(s) should include:

- Project identifier (name, location, contract number, or project number)
- The identity of the product(s) being supplied to the project (can be simple)
- A statement attesting that the products supplied are compliant with BABA requirements (the “certification”)
 - Certifying statement affirms knowledge of manufacturing processes and attests that the product meets BABA (noting product category)
- Location(s) of manufacturing being certified (city and state)
 - ✓ Minimum: documenting final point of manufacturing in the United States
- Signature of company representative making the certification (on company letterhead, signature can be electronic)

BABA: Waivers

- “Adjustment Period” public interest waiver
 - For SRF: **Amended** Design Planning Waiver Final, Approved
 - For WIFIA: Design Planning Waiver Final, Approved
 - For Selected OW programs: 6-mo. Waiver Final, Approved (through Mar 1, 2023)
- *De Minimis* public interest waiver
 - Agency-wide; Final, Approved
 - All projects use a small % (5%?) non-domestic products
- Small Project/Award Threshold – projects under \$250K threshold
 - Agency-wide; Final, Approved

AMENDED SRF DESIGN PLANNING WAIVER

- (Almost) Final amended SRF Design Planning Waiver
 - Allows for use by Community Grants (with SRF requirements)
 - Limits applicability to **FY22** or **FY23** appropriations
 - For SRF, this means projects funded by FY22/23 capitalization grant
 - Waiver replaces original SRF waiver only for projects "funded" after amended waiver approval date
 - Community Grants projects "awarded" before amended date, may use waiver if no "expenditures" incurred before date

UPDATED OMB IMPLEMENTATION MEMO: M-24-02

- Published October 25, 2023
- <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
- Replaces M-22-11 (April 18, 2022)
- Includes several revisions of note to M-22-11, including these key changes:
 - Significant changes to the “Cognizant Agency” policy from M-22-11
 - New policy regarding waivers and expenditures (“retroactivity”)
 - Additional information on MIAO’s expectations and role in waiver process

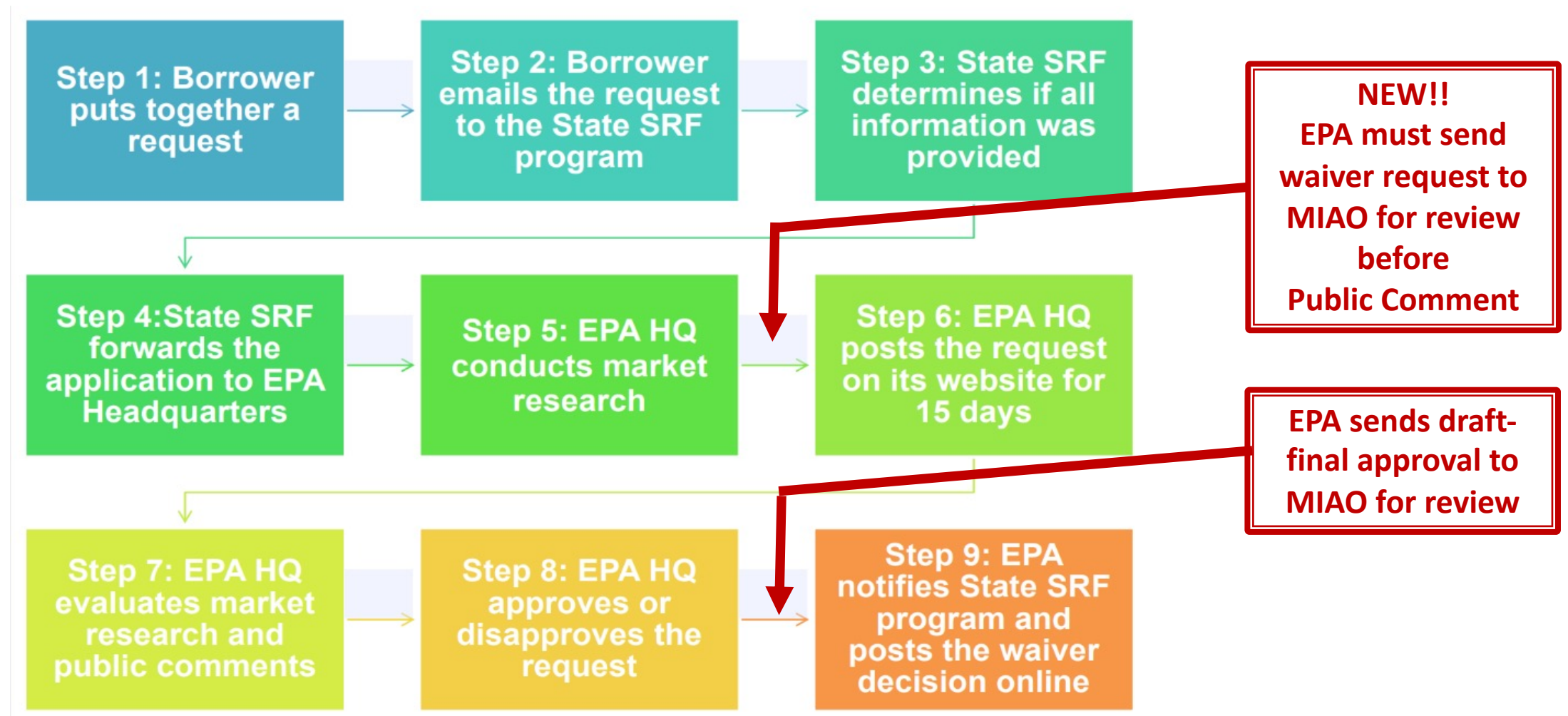
COGNIZANT AGENCY POLICY CHANGES IN M-24-02

- In M-22-11, the Cognizant Agency policy stated federal agencies could cooperate to minimize waiver duplication
- M-24-02 now states, “a Cognizant Agency cannot independently issue a waiver that applies to other agencies.”
- Further: “Any Federal agency that did not jointly issue the proposed and final waivers will need an individual waiver.”
- Projects funded by more than one federal agency will be required to propose and approve “individual” waivers or do so jointly.

PROHIBITION ON “RETROACTIVE” WAIVERS IN M-24-02

- Page 10 of M-24-02 includes new language regarding the timing of waivers
- MIAO acknowledges that waivers are necessary after an “award.”
- MIAO states, “the waiver cannot apply to expenditures already incurred under the Federal award for items subject to a Buy America preference before the effective date of the waiver.”
- Long-standing EPA policy: consider public interest waivers if circumstances outside assistance recipient’s control led to non-compliant product (e.g., misled).
- Cognizant agency policy changes could also cause further complications.

NEW STEPS IN BABA WAIVER PROCESSING THROUGH MIAO



WATER INFRASTRUCTURE PROJECTS RFI

- EPA and other Federal agencies are publishing a Request for Information (RFI) on water infrastructure products
 - Includes product list from initial research and outreach identified as potentially in short supply or not available
 - Comment period: Closed, December 20.
 - Primarily seeking comments from Manufacturers / Suppliers
 - Currently reviewing comments
 - If product waivers examined, EPA will follow precedent for Targeted, Time-Limited, Conditional (i.e, AIS stainless nuts&bolts)

OW IMPLEMENTATION MEMO

- Released November 3, 2022
- “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs”
- Supplemental to OMB M-22-11 guidance
- <https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>



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

OFFICE OF WATER

November 3, 2022

MEMORANDUM

SUBJECT: Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs

FROM: Radhika Fox
Assistant Administrator

A handwritten signature in black ink, appearing to be "Radhika Fox".

TO: EPA Regional Water Division Directors, Regions I – X
EPA Office of Water Office Directors

OVERVIEW

The Biden-Harris Administration recognized the Nation's critical need for infrastructure investment, championing the Bipartisan Infrastructure Law (BIL), which Congress passed on November 15, 2021 (also known as the Infrastructure Investment and Jobs Act (IIJA)). The BIL will provide an unprecedented level of federal investment in water and wastewater infrastructure in communities across America.

In Title IX of the IIJA, Congress passed the Build America, Buy America (BABA) Act, which establishes strong and permanent domestic sourcing requirements across all Federal financial assistance programs for infrastructure. The U.S. Environmental Protection Agency (EPA) Office of Water is honored to help lead the implementation of these provisions and is proud of its near decade of successful implementation of the American Iron and Steel (AIS) provisions for its flagship water infrastructure programs.

This is a transformational opportunity to build a resilient supply chain and manufacturing base for critical products here in the United States that will spur investment in good-paying American manufacturing jobs and businesses. EPA's efforts to implement BABA will help cultivate the domestic manufacturing base for a wide range of products commonly used across the water sector but not currently made domestically. This will take time, and flexibility will be important to ensure that EPA can leverage critical water investments on time and on budget to protect public health and improve water quality.

OW BABA Implementation Memo

- Section 1: General
- Section 2: Product Coverage
- Section 3: Co-funding
- Section 4: Waivers
- Section 5: Documenting Compliance
- Section 6: Programs with American Iron and Steel Requirements
- Section 7: Program-Specific Issues
- Appendix 1: Example Build America, Buy America (BABA) Act Construction Contract Language
- Appendix 2: Example Build America, Buy America (BABA) Act Assistance Agreement Language

OMB BABA GUIDANCE: M-24-02

- Released October 25, 2023
- “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure”
- Supersedes their initial implementation M-22-11
- <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

October 25, 2023

M-24-02

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young *Shalanda D. Young*

SUBJECT: Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

This memorandum provides supplemental implementation guidance to Federal agencies on: (1) the application of a Buy America preference¹ to Federal financial assistance programs for infrastructure; and (2) the process for waiving such a Buy America preference — including the circumstances under which waivers may be justified as consistent with applicable law and policy.² This memorandum rescinds and replaces Office of Management and Budget (OMB) Memorandum M-22-11. In addition, this memorandum removes direct conflicts between the earlier Memorandum M-22-11 and subsequent guidance issued by OMB in part 184 of Title 2 of the Code of Federal Regulations (“CFR”).³ This memorandum also provides updated guidance on a limited number of topics — including the waiver process — which modifies earlier guidance provided by OMB in Memorandum M-22-11. To the extent that any guidance provided in this memorandum conflicts with guidance in 2 CFR part 184, the guidance in part 184 prevails.

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“BABA”). Pub. L. No. 117-58, §§ 70901-27. BABA strengthens Buy America preferences associated with Federal financial assistance for infrastructure and will bolster America’s industrial base, protect national security, and support high-paying jobs. BABA requires that the head of each covered Federal agency⁴ must ensure that none of the funds made available for a Federal financial assistance program for infrastructure are obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.⁵

BABA affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to

¹ 2 CFR 184.3.

² 2 CFR 184.7; Executive Order 14005, “Ensuring the Future Is Made in All of America by All of America’s Workers,” 86 FR 7475 (Jan. 28, 2021).

³ 88 FR 57750 (Aug. 23, 2023).

⁴ For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

⁵ IIJA, § 70914(a).

RESOURCES

- Websites:
 - www.epa.gov/cwsrf/build-america-buy-america-baba
 - <https://www.madeinamerica.gov/>
- Email Inboxes:
 - BABA-OW@epa.gov (hyphen!)
 - SRF_AIS@epa.gov (underscore!)

QUESTIONS AND DISCUSSION