



Drinking Water State Revolving Fund
Intended Use Plan
Lead Service Line Replacements Funding
SFY 2023
(FFY 2022 Allotment)

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Texas Water Development Board rules governing the Drinking Water State Revolving Fund program (Texas Administrative Code, Title 31, Part 10, Chapter 371) may be accessed online at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=31&pt=10&ch=371](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=31&pt=10&ch=371)

Drinking Water State Revolving Fund Acronyms

ACS	American Community Survey
AIS	American Iron & Steel
AMHI	Annual Median Household Income
BABA	Build America, Buy America Act, 2021
CWSRF	Clean Water State Revolving Fund
DWSRF	Drinking Water State Revolving Fund
EPA	Environmental Protection Agency
FFY	Federal Fiscal Year
FMT	Financial, Managerial, and Technical
IIJA	Infrastructure Investment and Jobs Act, 2021
IUP	Intended Use Plan
I IPL	Initial Invited Projects List
LSL	Lead Service Line
LSLR	Lead Service Line Replacement
MCL	Maximum Contaminant Level
NEPA	National Environmental Policy Act
PIF	Project Information Form
POU	Point of Use
PPL	Project Priority List
PWS	Public Water System
SDWA	Safe Drinking Water Act
SFY	State Fiscal Year
SRF	State Revolving Fund
TCEQ	Texas Commission on Environmental Quality
TWDB	Texas Water Development Board

I. Overview

The Infrastructure Investment and Jobs Act, 2021, Pub. L. 117-58 (IIJA) appropriated capitalization grant funds for Federal Fiscal Years (FFY) 2022 to 2026 for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines.

This Intended Use Plan (IUP) covers the DWSRF capitalization grant funds allocated to Texas from FFY 2022 appropriations in the amount of \$222,155,000. The appropriations require 49 percent of the capitalization grant amount be provided as additional subsidization, which will be in the form of principal forgiveness.

A total of \$213,455,000 is available for projects under this IUP, including the required \$108,855,950 for additional subsidization, which this program will provide in the form of principal forgiveness

The Environmental Protection Agency (EPA) implementation memorandum provides the following guidance and information:

Eligible Use of Funds:

For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible and be a lead service line replacement (LSLR) project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines.

Any project funded under this appropriation involving the replacement of a lead service line must replace the entire lead service line, not just a portion, unless a portion has already been replaced or is concurrently being replaced with another funding source.

To define a “lead service line” for the purpose of this appropriation, EPA will use an amended version of the Lead and Copper Rule Revisions’ regulatory definition, which is,

“...a service line made of lead, which connects the water main to the building inlet. A lead service line may be owned by the water system, owned by the property owner, or both. For the purposes of this subpart, a galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material. If the only lead piping serving the home or building is a lead gooseneck, pigtail, or connector, and it is not a galvanized service line that is considered an LSL the service line is not a lead service line.”

EPA has expanded the eligible uses beyond the definition above to also include the replacement of lead goosenecks, pigtails, and connectors as eligible expenses, whether standalone or connected to a lead service line.

Additional Subsidization:

The IIJA contained the following provision:

“Provided further, That for the funds made available under this paragraph in this Act, forty-nine percent of the funds made available to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide subsidy to eligible recipients in the form of assistance agreements with 100 percent forgiveness of principal or grants (or any combination of these), notwithstanding section 1452(d)(2) of the Safe Drinking Water Act (42 U.S.C. 300j-12)”

This language requires states to provide 49% of the capitalization grant amount as additional subsidization in the form of principal forgiveness and/or grants. EPA’s guidance says states must provide all additional subsidization to water systems that meet the state’s disadvantaged community criteria.

II. Background

In 1996 Congress passed federal amendments to the SDWA that established the DWSRF program. The Texas Water Development Board (TWDB) is authorized by state law to administer this program for Texas.

The TWDB is the financing agency for the DWSRF and has a contractual relationship with the state’s primacy agency, the Texas Commission on Environmental Quality (TCEQ), to perform DWSRF activities. TCEQ performs DWSRF activities that include rating proposed projects, state program management, small systems technical assistance, assessments for ground water sources, source water technical assistance, sanitary surveys, complaint investigations, enforcement activities, disaster assistance, and implementation of the State of Texas approved Capacity Development Strategy.

The IIJA appropriated supplemental capitalization grant funds for Federal Fiscal Years (FFY) 2022 to 2026 for general activities, lead service line replacement, and emerging contaminants. The SFY 2023 IUP covering general activities using the FFY 2022 annual and IIJA appropriations was effective October 5, 2022. Additional details regarding the funding allotment for addressing emerging contaminants will be provided at a future date.

III. Projects to Fund

A. Eligible Applicants

Applicants eligible to apply for assistance are:

- Existing community Public Water Systems (PWSs) including political subdivisions, nonprofit water supply corporations and privately-owned community water systems
- Non-profit, non-community public water systems
- State agencies

B. Eligible and Ineligible Use of Lead Service Line Replacement Funds

1. Examples of eligible projects and activities:

For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible and be a LSLR project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines. Any project funded under this appropriation involving the replacement of a lead service line must replace the entire lead service line, not just a portion, unless a portion has already been replaced.

- Complete removal of lead service lines (public and privately owned portion) or service lines made of galvanized iron or galvanized steel (that are currently or have previously been downstream of lead components) and replacement with a pipe that meets the requirements established under 40 CFR 143 and which complies with state and local plumbing codes and or building codes.
- Removal of lead or galvanized goosenecks, pigtails, and connectors, and replacement with an acceptable material that meets the requirements established under 40 CFR 143 and which complies with state and local plumbing codes and or building codes.
- Replacement of curb stops, curb stop boxes, and other service line appurtenances that are removed as part of full LSLR.
- Site restoration, including landscaping, sidewalks, driveways, etc. if the removal was necessary to replace the lead service line.
- Permit fees if the fees are normal, required, and specific to the LSLR. It is recommended that communities waive these fees.
- Temporary pitcher filters or point-of-use (POU) devices certified by an American National Standards Institute accredited certifier to reduce lead during or for a short time period after LSLR projects.
- Development or updating of lead service line inventories, including locating and mapping lead service lines.
- Methods of investigation to develop inventories could include visual observation, water quality sampling (non-compliance), excavation, vacuum or hydro-excavation, statistical analysis, or other emerging technologies.
- Planning and design for infrastructure projects listed above.
- Non-routine lead sampling (if not for compliance purposes) as part of a LSLR project.

2. Ineligible projects and activities:

- A project or activity that is not a lead service line replacement project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines.
- Any project or activity not replacing the entire lead service line unless a portion of a lead service line has already been replaced or is concurrently being replaced with another funding source.
- Corrosion control studies, corrosion control infrastructure, and water meters. Also, consistent with the regular DWSRF program, funding for bottled water and premise plumbing are not eligible under this appropriation.

3. **Reimbursement for service line inventory activities** – An entity may include in its proposed project a request for reimbursement for eligible initial service line inventory activities that were required to comply with the EPA’s Lead and Copper Rule Revisions regulation or other service line inventories conducted or being updated. However, the activities must have been performed in accordance with all DWSRF program requirements to be reimbursed.

IV. Amount Available / Allocations

1. Allocations

A total of \$213,455,000 is available for projects under this IUP. A total of \$108,855,950 will be allocated to the required additional subsidization funding and \$104,599,050 will be allocated to the loans/bonds, including the financed loan origination fee.

2. Principal Forgiveness / Loan ratio

All financing will be made at the ratio of 51 percent principal forgiveness and 49 percent loan/bond, including the financed loan origination fee. The loan origination fee must be financed under this IUP as part of the DWSRF program commitment to ensure the TWDB maintains the required principal forgiveness percentage for the capitalization grant. An entity’s project must meet the disadvantaged criteria to receive funding under this IUP. See Appendix D: Criteria to Determine Disadvantaged Community Eligibility for more information.

3. Inventories - Separate interest rates, closings requirements, and debt instruments offered

The loan portion of the approved project covering the service line inventories will be at zero percent (0%) interest, may close separately from any portion for approved for Planning, Acquisition, Design, and/or Construction, and may be in the form of a loan agreement to any entity that may legally employ that option to save on closing costs.

The loan/bond financing for Planning, Acquisition, Design, and/or Construction portion will be at the DWSRF program’s regular reduced interest rate.

4. Interest rate reduction methodology:

The interest rate on these equivalency projects will be a 35 percentage reduction from the Thomson Reuters Municipal Market Data (MMD) rate adjusted for yield to maturity that is applicable to the entity’s rating, with non-rated entities using the Baa rate.

Exclusions from the interest rate reduction methodology - the interest rate reduction methodology does not apply to any portion of financing that is offered at zero percent.

Allocation of Grant Funds, including Additional Subsidization & Set-asides:

DWSRF FFY 2022	\$222,155,000	% of Grant
Minimum & Maximum - Principal Forgiveness		
Minimum & Maximum (Total)	\$108,855,950	49%
Current Allocation of Principal Forgiveness		
Total Currently Allocated	\$108,855,950	49%
Total Breakdown		
Total Principal Forgiveness Allocated to Projects	\$108,855,950	49%
Set-aside - TWDB Administration (including Project Management System)	\$8,700,000	3.92%
Set-asides - Small Systems Technical Assistance, State Program Management, Local Assistance and Other State Programs	\$0	
Loans/Bonds	\$104,599,050	47%
Total	\$222,155,000	100%

V. Funding Options and Terms

Equivalency projects (Federal Requirements) – All projects will be considered equivalency projects, which must follow all federal requirements commonly known as “cross-cutters”. More information on the federal cross-cutters may be found in Appendix E.

1. Funding Options Available:

Entities with projects that meet the disadvantaged criteria that are listed on the Initial Invited Projects List (IIPL) and subsequent Project Priority Lists (PPLs) may be invited to apply for the following funding options.

a. Inventories (Equivalency)

Funding for the development or updating of service line inventories, including locating and mapping service lines. To be eligible, the activity must have been performed in accordance with all DWSRF program requirements, including the Disadvantaged Business Enterprise requirements. All financing will be made at the ratio of 51 percent principal forgiveness and 49 percent loan/bond, including the financed loan origination fee. The loan origination fee must be financed under this IUP as part of the DWSRF program commitment to ensure the TWDB maintains the required principal forgiveness percentage for the capitalization grant. The loan portion will have an interest rate of zero percent (0%). It will carry different closing timeframe requirements, and the repayable portion may be provided in the form of a loan agreement to any entity that may legally employ that option.

b. Planning, Acquisition, Design, and/or Construction (Equivalency)

Funding for all other eligible activities will be under this option. All financing will be made at the ratio of 51 percent principal forgiveness and 49 percent loan/bond, including the financed loan origination fee. The loan origination fee must be financed under this IUP as part of the DWSRF program commitment. The loan/bond portion will have the regular subsidized interest rate. The funding will have different closing timeframe requirements than the inventory funding option. This financing will only be provided in the form of a loan agreement to those entities that may only employ that option under state law.

2. Terms of Financial Assistance

Loans may be offered for a term of up to 15 years for the portion provided under the inventory only funding option. Loans may be offered up to 30 years for the planning, acquisition, design, and/or construction phases. If the project consists of service line inventories and planning, acquisition, design, and/or construction phases, then the cost for the inventories, if less than 25 percent of the total amount being financed, may be financed with a loan of up to 30 years. The zero percent rate on the costs for the service line inventories will reduce the overall interest rate on the total amount financed. The term of financial assistance offered may not exceed the expected design life of an eligible project. The TWDB may allow principal and interest payments on a bond or loan to commence not later than 18 months after completion of the project, if considered appropriate as determined by the Executive Administrator.

3. Federal Requirements on Available Funds

Funds are subject to federal requirements such as Davis-Bacon Act prevailing wages and the Build America, Buy America Act. DWSRF-funded projects must follow all federal “cross-cutter” requirements and EPA’s signage requirements. These requirements are outlined in Appendix E.

VI. Goals

The primary goal of the Texas DWSRF program is to improve public health protection. In addition, the overall goals of the Texas DWSRF program are to identify and provide funding for maintaining and/or bringing Texas’ PWSs into compliance with the SDWA; to support affordable drinking water and sustainability; and to maintain the long-term financial health of the DWSRF program fund. Goals specific to the lead service line replacement funding in this IUP are listed below.

A. Short-Term Goals

- 1.** Fund eligible project proposals to identify and replace lead service lines up to the amount of funding available.
- 2.** Provide outreach to systems within Texas on the availability of this funding to identify and replace lead service lines.

3. To improve public health throughout Texas by employing disadvantaged criteria that will maximize the number of systems able to identify and replace any lead service lines in Texas.
4. The TWDB and TCEQ will collaborate on the deployment of these funds in a manner that will provide the most beneficial assistance to entities conducting required service line inventories and replacing identified lead service lines.

B. Long-Term Goals

1. Use the lead service line grant funds provided to Texas to fund project proposals to replace all identified lead service lines in Texas.
2. To the extent eligible project proposals are received, use all the lead service line replacement funds allotted to Texas to improve public health and ensure compliance with the requirements of SDWA.
3. To enhance the timely identification and removal of any lead service lines in Texas, maximize the number of systems that receive the benefit of the subsidy available under the IIJA appropriations.
4. The TWDB and TCEQ will collaborate on the deployment of these funds in a manner that will provide the most benefit to public health and ensure compliance with the requirements of SDWA.
5. Employ these funds in a manner that will maintain the fiscal integrity of the DWSRF in perpetuity.

VII. Participating in the DWSRF Program

A. Solicitation of Project Information

Project information will be solicited from eligible entities across the state using direct emails, notices posted on the TWDB website, and financial assistance workshops held throughout the state. Potential applicants must submit a Project Information Form (PIF) by the response deadline in Appendix A.

The required information submitted on a PIF consisted of:

- A detailed description of the proposed project to identify and/or replace lead service lines.
- A map(s) showing the location of the service area.
- An estimated total project cost that is certified by a registered professional engineer if project costs are greater than \$100,000.

- A checklist and schedule of milestones to determine a project's readiness to proceed to construction.
- Information necessary to rank the project:
 - (a) Whether there are identified lead service lines
 - (b) Project area's Annual Median Household Income
 - (c) System size – number of connections
- Information necessary to determine disadvantaged eligibility.
- Signature of the applicant's authorized representative.
- Additional information detailed within the solicitation for projects.

Any survey being used for income determination must be completed within five years prior to the date the TWDB receives the PIF.

B. Evaluation of the Project Information Received and Priority Rating System

All PIFs will receive a review by TWDB and TCEQ staff. The scores are based on information received by any established PIF deadline. Throughout the evaluation process, entities will be contacted by staff if additional information is needed.

C. Ranking and Creation of the Project Priority List and Initial Invited Projects List

Each project submitted by the initial deadline and determined to be eligible is ranked from highest to lowest by the rating factors and included on the PPL. In the event of ties in the rating, priority is given to the project serving the fewest connections. Project information submitted after the PIF deadline will not be considered for rating purposes prior to adoption of the initial PPL. Following approval of the IUP, changes to a ranked project that result in a project no longer addressing the issues for which it was rated will require the project to be re-rated and re-ranked. Changes in the project that do not trigger re-rating and re-ranking are:

1. The applicant for a proposed project changes but the project does not change;
2. The number of participants in a consolidation project changes and the change does not result in a change to the combined rating factor; and
3. The fundable amount of a proposed project does not increase by more than 10 percent of the amount listed in the approved IUP. The Executive Administrator may waive the 10 percent limit to incorporate additional elements to the project.

The IIPL presented in the IUP (Appendix K) refers to a subset of projects from the PPL and includes only the projects to be invited to apply for funding during the initial invitation round following the Board's approval of the IUP. The IIPL includes the type and amount

of funding necessary to meet requirements and goals of the DWSRF, such as Additional Subsidization requirements. Based on a review of readiness to proceed to construction, the TWDB determines which phases would be eligible to receive funding. The phases indicated on the IIPL represent the phases deemed eligible based on that review.

E. Bypassing Projects

The TWDB's Executive Administrator may decide to bypass, or skip, higher ranked projects in favor of lower ranked projects to ensure that funds available are utilized in a timely manner, that statutory and capitalization grant requirements are met. In addition, if an entity is offered funding for any project that has an interrelated project ranked lower on the list, the Executive Administrator has discretion to also offer funding for the interrelated project. Reasons for bypassing projects are discussed in Appendix F.

F. Phases for Invited Projects

1. Inventories Funding Only

This option covers both new service line inventories as well as reimbursement of costs to perform service line inventories is used to fulfill TCEQ's requirements for the EPA Lead and Copper Rule Revisions regulation. To be eligible for reimbursement, the activity must have been performed in accordance with all DWSRF program requirements, including the Disadvantaged Business Enterprise requirements.

2. Pre-Design Funding Option (or Inventories, Planning, Acquisition, Design and Construction Funding)

The pre-design funding option allows an applicant to receive a single commitment for all phases of a project. The construction portion of the project must be deemed ready to proceed and lead service lines must be identified before funds for the construction phase will be released.

2. Construction Funding Only

All projects that were determined to be ready to proceed to construction based on the current status of their planning, acquisition, and design activities were included on the IIPL and will receive an invitation to fund the construction portion of the project. Lead service lines must be identified before construction work proceeds.

3. Planning, Acquisition, and Design

A project that was not deemed ready to proceed to construction may receive an invitation to fund only the Planning, Acquisition, and/or Design portion of the project.

4. Viability and Feasibility of Projects

A project must demonstrate to the TWDB that it is viable, feasible, and sustainable prior to being invited to submit an application and prior to receiving a commitment for any funding option for the acquisition, design or construction phases of the project.

A project may receive funds for the planning phase to assess the viability and feasibility of a project.

G. Invitations and Application Submissions

Entities with projects on the IIPL will be informed of the opportunity to submit an application for the project phases shown on the list using the available funding options. An entity on the list may not submit an application until it receives an invitation from TWDB. TWDB will consider the need to meet the minimum federal requirements when deciding whether it needs to bypass projects on the IIPL.

Intent to Apply

As part of the invitation process the TWDB may require the applicant to submit an intent to apply form or information by a specified deadline showing the applicant's intent to request up to the eligible amount of funding in the IUP. Failure to submit the requested intent to apply information by the established deadline will result in TWDB bypassing the project on the IUP list.

Prior to submitting an application, entities are required to participate in a pre-application meeting to discuss the application process and project requirements. Invited applications from projects on the IIPL that are received during the initial invitation round after Board approval of the IUP will be allotted available funding based on rank order. All projects must be determined administratively complete as submitted, or within 14 days from the date the applicant receives a notice to correct deficiencies, or any funding may be reallocated.

Each application received by the TWDB will be reviewed to ensure that the required milestones have been met to allow funding of the phase(s) being requested. If the application review determines that a project is not ready to proceed for funding for the phase(s) being requested, the project may be bypassed.

Projects may be bypassed if an applicant fails to timely submit a complete application or additional requested information.

Deadline for Receipt of Application

The TWDB will establish a deadline for receipt of the application. If the application is not received by the established deadline, the project will be bypassed.

Subsequent Invitations

After the initial invitation period, if any funds remain unallocated then other projects on the PPL will be invited in rank order. Applicants may submit a PIF at any time for a project to be considered for inclusion on an amended PPL. The new projects will be considered after those on the original PPL list have been invited. The amended PPL will undergo a 14-day public review period that will be advertised on the agency website.

H. Addressing Any Water Loss Mitigation within the Application

If an applicant that is a retail public utility providing potable water has a water loss that meets or exceeds the threshold for that utility in accordance with §358.6 of Title 31, Part 10, Texas Administrative Code, the retail public utility must use a portion of any financial assistance received from the DWSRF, or any additional financial assistance provided by the TWDB, to mitigate the utility's water loss, subject to federal requirements that limit the use of these funds solely to the replacement of lead service lines. However, at the request of a retail public utility, the TWDB may waive this requirement if the TWDB finds that the utility is satisfactorily addressing the utility's system water loss. Mitigation, if necessary, will be in a manner determined by the retail public utility and the TWDB's Executive Administrator in conjunction with the project proposed by the utility and funded by TWDB.

I. Closing Deadlines

The deadlines to close a commitment is dependent on whether the commitment includes funding for inventories. The portion of the commitment funding inventory activities must close within twelve months from the date of commitment. The portion of the commitment covering all other activities including planning, acquisition (if needed), design and construction must close within 24 months. Therefore, if the financing included projects costs for inventories along with planning, acquisition (if needed), design and construction then it there may be two or more closings based on the relative portion for each type of activity. In extenuating circumstances, the Board may grant extensions of time to close if an applicant demonstrates sufficient reason for a delay. The TWDB may extend these closing deadlines if necessary to conform to the closing schedule for concurrent financing for the project from another TWDB financing program.

Type of Financial Assistance	Closing Deadline
Portion of commitment covering Inventory activities	12 months
All other portions of commitment	24 months

J. Limits

1. Proportionate Share/Capacity

The TWDB may limit the amount of total funding available to an individual entity or project based on a proportionate share of total funds available.

2. Additional Project Funding Before Closing

The total project costs may be increased if the entity shows that additional funds are necessary to implement the project.

3. Reduction in Closing Amount

If the closing amount is reduced from the commitment amount, then the principal forgiveness amount for the closing will be reduced on a pro rata basis to maintain the

required ratio of 51 percent principal forgiveness and 49 percent loan, including the origination fee.

K. Leveraging to Provide Additional Funding

The TWDB may leverage the DWSRF program as necessary to meet the demand for funding additional drinking water projects.

L. Updates to the Intended Use Plan

Substantive changes to the IUP may be made through an amendment after a 14-day public review and comment period. Non-substantive changes may be made by the TWDB without public notification.

VIII. Set-Asides

Federal regulations allow states to set aside up to 31 percent of the capitalization grant funds for purposes other than financing construction projects for water systems. The set asides for the FFY 2022 capitalization grant for lead service line replacement will be allocated as shown below.

A. Texas Water Development Board Administration and Technical Assistance Activities

The SDWA allows a state to set aside funds to cover the reasonable costs of administering the DWSRF and to provide technical assistance to public water systems. The amount that may be taken for these purposes is the amount of any fees collected by the State, regardless of the source; and the greatest of (1) \$400,000, (2) one-fifth of one percent of the current valuation of the DWSRF (both loan and set-asides), and (3) an amount equal to four percent of all grant awards to the DWSRF for the particular fiscal year.

The TWDB will draw administrative and technical assistance set-asides from the FFY 2022 Capitalization Grants in the amount of \$8,700,000. This amount is based on the option of using four percent of the FFY 2022 capitalization grant for lead service line replacement activities. These funds will be used for allowable expenses such as reporting activities, payment processing, application assistance, project development and monitoring, and technical assistance to public water systems. In addition, the TWDB assesses fees for the purpose of recovering administrative costs. These fees are placed in a separate account for future administrative expenses. The fees are generated by an assessment of 2.0 percent of the portion of the DWSRF financial assistance that is repaid and is assessed at closing. Fees collected will be deposited into the Administrative Cost Recovery Fund.

B. Coordination of Activities with the Texas Commission on Environmental Quality

The TWDB and TCEQ regularly communicate to discuss projects in need of financial assistance through the DWSRF program. The two agencies hold periodic DWSRF coordination meeting and TCEQ staff attend many of TWDB's pre-application meetings and financial assistance workshops.

IX. Financial Status

A. State Match

No state match is required for the lead service line replacement grant funds.

B. Binding Commitment Requirement

The TWDB will enter into binding commitments with entities that total 120 percent of the amount of a FFY 2022 grant payment allocated to projects within one year after the receipt of the grant payment. A binding commitment occurs when the TWDB's Board adopts a resolution to commit funds to a project.

C. Leveraging

The DWSRF program will be leveraged as necessary to provide funds to meet the needs of public water systems in the state. The TWDB does not anticipate leveraging the lead service line replacement grant funds at this time.

D. Cross-collateralization

On March 1, 2018, the TWDB has cross-collateralized the CWSRF and the DWSRF as a source of revenue and security for the payment of the principal and interest on bonds for the DWSRF and CWSRF programs. State authority is provided under Section 15.6042 of the Texas Water Code. The TWDB has received a certification from the state Attorney General that state law permits the TWDB to cross-collateralize the assets of the CWSRF and the DWSRF. Cross-collateralization of the CWSRF and DWSRF will enhance the ability of the DWSRF to leverage its funds and increase its lending capacity without detriment to either of the SRF programs.

1. Summary of the cross-collateralization structure:

- a. The type of moneys which will be used as security – Pledged Political Subdivision Bonds and certain other funds included in the Master Resolution (program account, portfolio account, and revenue account) will secure the bonds.
- b. How moneys will be used in the event of a default - In the cross-collateralized scenario, Political Subdivision Bonds from the non-defaulting program will be used to cover the debt service delinquency on the defaulting program. If, for any reason, insufficient Political Subdivision Bonds exist in both programs, then program equity will be utilized.
- c. Whether or not moneys used for a default in the other program will be repaid; and, if it will not be repaid, what will be the cumulative impact on the funds. While a

decision to repay or not repay would be made at the time of default, the TWDB would either require repayment when funds are available or transfer repayment funds.

2. Proportionality – The proceeds generated by the issuance of bonds will be allocated to the purposes of the CWSRF and the DWSRF in the same proportion as the assets from the two funds that are used as security for the bonds.
3. State Match – In accordance with Texas Water Code §§ 17.853(c)(1) and 17.859, the TWDB intends to provide state match through the issuance of one or more revenue bonds in a program series that will fund the two SRF programs. Supplemental bond resolutions for the issuance of each series will provide detail on what specific money is pledged as security for each program (CWSRF or DWSRF) within the series. As required, the CWSRF and DWSRF will continue to be operated separately. The cash flows for the DWSRF program and the CWSRF program will be accounted for separately. Repayments on loans in the CWSRF program will be paid to the CWSRF and repayments on loans made in the DWSRF program will be paid to the DWSRF.

Similar to other states' financing methods where state match is not provided by appropriation and is instead generated through debt issuance, the TWDB cross-collateralization structure allows the TWDB to retire bonds for the State Match with interest earnings payments only, not principal, earned from each SRF in accordance with 40 CFR § 35.3550(g)(3).

E. Method of Cash Draw

There is no state match and EPA has revised its cash draw policy. Therefore, TWDB will draw federal funds using acceptable evidence of expenditures.

F. Long-Term Financial Health of the Fund

The long-term financial health of the DWSRF is monitored through ongoing cash flow and capacity modeling. The TWDB lending rate policy has been established to preserve the corpus of the capitalization grants and state match funds, excluding the amount of additional subsidization, set-aside amounts from each grant, and net transfers. The TWDB will continue to manage the DWSRF to ensure funds will be available in perpetuity for activities under the SDWA.

G. Interest Rate Policy

The interest rate will be a percentage reduction from the Thomson Reuters Municipal Market Data (MMD) rate adjusted for yield to maturity that is applicable to the entity's rating, with non-rated entities using the Baa rate, as follows:

(a) Equivalency projects: 35% reduction

Exclusions from interest rate reduction methodology - the interest rate reduction methodology does not apply to any portion of financing that is offered at zero percent (0%).

Rates are set five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of the financial assistance agreement, but may be based on interest rate levels determined as of an earlier date, and are in effect for forty-five days.

H. Fees

The only fee is an origination fee of 2.0 percent that is assessed at closing. All fees must be financed through the DWSRF loan. Fees are not deposited into the DWSRF.

I. EPA Program Evaluation Report and Audit

EPA has conducted an annual program review of the DWSRF program for SFY 2021 and sent their final report to TWDB.

The Texas State Auditor's Office published the results of the SFY 2021 Single Audit of the DWSRF on February 25, 2022 (Report 22-320). There were no findings as a result of the review.

X. Navigating the Lists *(Note: the project lists are not part of the draft Narrative of the IUP. The project lists will be part of the complete IUP.)*

Appendices G – J are a series of lists that detail the proposed project information of each project based upon the PIFs received.

- **Appendix G** - The alphabetical list is the PPL sorted alphabetically. It contains the project information; the name of the applying entity, their total number of points and associated priority order rank, the type of system, the system's PWS ID number, the total population based on TCEQ data, a detailed description of the proposed project, all project phases requested by the entity, the estimated construction start date, total project cost, information regarding included green components, and a reference to any other related PIFs from the current or previous IUPs. A grand total for all of the projects is listed on the last page of the appendix.
- **Appendix H** – Lists projects that were deemed ineligible to receive DWSRF funding with a brief description as to why they were deemed ineligible.
- **Appendix I** – Lists projects in order of highest priority to receive funding. The content is the same as the alphabetical list in Appendix G.
- **Appendix J** – Is the list of projects that will be invited in the initial invitation round. The information provided in this list is similar to the alphabetical and priority order lists. The TWDB has determined which project phases are eligible to receive funding during this SFY, which is depicted in the Phase(s) column. Projects on this list will receive an invitation letter from the TWDB upon Board approval of the IUP. Pertinent notes and the definitions of acronyms and footnotes are listed on the last page of the appendix along with a grand total for the projects.

Appendix A. Public Review and Comment

Public Participation in the Development of the Intended Use Plan

Public participation is an important and required component of the IUP development process. The TWDB takes seriously its responsibility in administering these funds and considers public input necessary and beneficial.

A. Notice

To seek public comment, the draft IUP narrative will be made available until May 23, 2023. The draft FFY 2022/SFY 2023 DWSRF Lead Service Line Replacement IUP narrative will be announced as follows:

- Public notification of the draft IUP narrative and the public comment period will be posted on the TWDB website at www.twdb.texas.gov.
- A copy of the draft IUP narrative will be sent to EPA after published.

B. Comment

Comments will be accepted via the following two options from March 22, until midnight on May 23, 2023.

1. Emailing comments to the following electronic mail address and specifying in the subject line "*DWSRF LSLR comments*".

DWSRF@twdb.texas.gov.

2. Mailing comments to the following postal mail address:

Mr. Mark Wyatt
Director, Program Administration and Reporting
Texas Water Development Board
P.O. Box 13231
Austin, TX 78711-3231

C. Effective Date

The FFY 2022 DWSRF Lead Service Line Replacement IUP is considered final on the effective date.

D. Documentation

The final entire IUP, including project lists, will be formally submitted to the EPA and posted on the TWDB website.

Appendix B. Projected Sources and Uses of Funds
 (As of March 1, 2023)

SOURCES:

FFY 2022 Federal Capitalization Grant	\$222,155,000
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TOTAL SOURCES:	\$222,155,000
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USES:

Set-Asides from FFY 2022 Grant

TWDB Administrative Set-Aside	\$8,700,000
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Total TWDB Set-Aside:	\$8,700,000
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TCEQ Small Systems Technical Assistance Program Set-Aside	\$0
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TCEQ Texas State Management Program Set-Aside	\$0
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TCEQ Local Assistance and Other State Programs Set-Aside	\$0
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Total TCEQ Set-Asides	\$0
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Projects to be Funded:

SFY 2023 IUP Commitments – Additional Subsidization	\$108,855,950
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SFY 2023 IUP Commitments – Bonds/Loans	\$104,599,050
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Total Projects To Be Funded - SFY 2023:	\$213,455,000
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TOTAL USES:	\$222,155,000
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NET SOURCES (USES):	\$0
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Fees are not deposited into the Fund; therefore, based on EPA guidance they are not included in the Sources and Uses for the Fund.

Appendix C. Rating Criteria

Identified Lead Service Lines

If the entity has identified lead service lines as part of the water system – 25 points

Annual Median Household Income (AMHI) level:

State AMHI divided by the Project Area's AMHI as a ratio X 10 equals the points (to nearest hundredths)

Examples of otherwise identical applicants:

Project area has a lower income - $\$67,321 / \$45,000 = 1.496 \times 10 = 14.96$ (more points / ranks higher)

Project area has a higher income - $\$67,321 / \$85,000 = 0.792 \times 10 = 7.92$ (fewer points / ranks lower)

System size

Applicant entity serves under 1,000 connections – 10 points

Applicant entity serves between 1,000 and 10,000 connections – 5 points

Applicant entity serves over 10,000 connections but fewer than 50,000 connections – 2 points

Tie Breaker

Rating factors will be ranked in descending order with priority given to the entity serving the fewest connections first.

Appendix D. Criteria to Determine Disadvantaged Community Eligibility

An entity is considered an eligible disadvantaged community if it:

- 1) may have lead service lines within the distribution system, and
- 2) 51 percent or more of the proposed project beneficiary area based on household connections has an Annual Median Household Income (AMHI) level that does not exceed 150 percent of the state's AMHI level. The state AMHI from the U.S. Census 2017-2021 American Community Survey (ACS) 5-year estimate is \$67,321; therefore the AMHI of the proposed project beneficiary area must not exceed \$100,982

City/Place, Census Tract and Block Group geographical U.S. Census geographical areas or an eligible income survey may be used for the AMHI calculation.

First method, easiest method to employ:

To lessen the burden on applicants who can meet the requirement without considering the 51% level, the TWDB will make the presumption that the average (mean) of the AMHI of all U.S. Census Bureau Cities/Places, Block Groups and/or Census Tracts containing any portion of the project service area is the AMHI for the project. Applicants must provide a list of all of the Cities/Places, Block Groups and/or Census Tracts containing any portion of the project service area, the AMHI for each City/Place, Block Group and/or Census Tract, and a detailed map of the proposed service area to be considered for using the presumptive approach in establishing the project's AMHI. TWDB will use the project area map to verify the associated Cities/Places, Block Groups and/or Census Tracts submitted. The Executive Administrator will then determine whether this option is a reasonable estimate of the AMHI for the project service area and may be used for the AMHI threshold calculation.

Second method, if first method does not meet the 150 percent threshold:

Any applicant that does not meet the 150 percent threshold by using the average (mean) of the U.S. Census Bureau Block Groups and/or Census Tracts containing any portion of the project service area may submit the actual number of household connections in each Block Group and/Census Tract and calculate the weighted average AMHI for the project service area.

Third method, if necessary to meet the 150 percent threshold:

Finally, if the AMHI of the applicant's project service area does not fall within 150 percent of the state AMHI threshold without consideration of the 51 percent calculation, the applicant would need to provide the number of household connections in each U.S. Census Bureau's geographical area that is used in the calculation.

Alternatively, as with general program activities, the entity may conduct an income survey for determining the applicable AMHI. Any survey being used for income determination must be completed within five years of prior to the date the TWDB receives the PIF.

Acceptable Source of Socioeconomic Data for FFY 2022

For this IUP, the TWDB will utilize:

(1) U.S. Census 2017-2021 ACS 5-year estimates. An Excel spreadsheet containing this data is located here:

<https://www.twdb.texas.gov/financial/instructions/doc/ACS-data-for-SFY2024.xlsx>

Entities may also access their U.S. Census 2017-2021 ACS 5-year estimate data directly from the U.S. Census webpage. Census Data Search guidance (WRD-284) is available on the TWDB website at: <http://www.twdb.texas.gov/financial/instructions/doc/WRD-284.docx>

OR

(2) Data from a socioeconomic survey approved by the Executive Administrator of a statistically acceptable sampling of customers in the service area completed in accordance with the most current Socioeconomic Surveys Guidelines (WRD-285) posted on the TWDB website. Any survey being used for income determination must be conducted within five years prior to the date the TWDB receives the PIF. An entity must submit documentation that substantiates the inadequate or absent Census data that led to the need to conduct a survey. **All entities must obtain prior approval to use survey data instead of the most recently available ACS data.**

In instances where the ACS data does not adequately reflect an entity's service area (e.g. an entity serves a community outside of its Certificate of Convenience and Necessity, an entity serves another system, the entity is a system without a Census Bureau defined boundary, etc.), a prorated analysis of ACS block group data will be performed to calculate the AMHI. Systems owned and operated by a public school or school district will be evaluated for their annual median household income for their school district boundary.

If recent reliable data is unavailable for the school district to determine the AMHI, the TWDB will use information from the Texas Education Agency's Title I, Part A program to determine income eligibility. If more than 50 percent of the school districts campuses are eligible for the program, the district's AMHI will be assumed to be eligible.

Appendix E. Federal Requirements and Assurances

A. Federal Requirements

1. Davis-Bacon Wage Rate Requirements

A subrecipient must comply with the requirements of section 1452(a)(5) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(5)) in all procurement contracts and must require contractors to include compliance with section 1452(a)(5) of the Safe Drinking Water Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction project must contain in full in any contract in excess of \$2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 1452(a)(5) requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements. TWDB guidance is available at <http://www.twdb.texas.gov/financial/instructions/doc/DB-0156.pdf>.

2. American Iron and Steel (AIS)

The TWDB and all DWSRF financial assistance recipients will comply with the American Iron and Steel (AIS) requirement in applicable federal law, including federal appropriation acts. Federal law requires DWSRF assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The term “iron and steel products” means the following products made primarily of iron or steel:

- lined or unlined pipes and fittings
- manhole covers and other municipal castings
- hydrants
- tanks
- flanges, pipe clamps and restraints
- valves
- structural steel
- reinforced precast concrete
- construction materials

EPA may waive the AIS requirement under certain circumstances.

TWDB guidance is available at

<http://www.twdb.texas.gov/financial/instructions/doc/TWDB-1106.docx>.

3. Build America, Buy America Act, 2021 (BABA)

The requirements of the Build America, Buy America Act, 2021 (P.L. 117-58) will apply.

The Office of Management and Budget guidance may be found in OMB Memorandum M-22-11 www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.

EPA has released BABA guidance available here <https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>.

Information on EPA's approved BABA waivers can be found on their [website](#).

4. Environmental Reviews

Environmental review requirements are specified in Texas Administrative Code, Title 31, Part 10, Chapter 371.

5. Generally Accepted Accounting Principles

Assistance recipients must maintain project accounts according to Generally Accepted Accounting Principles as issued by the Governmental Accounting Standards Board, including standards relating to the reporting of infrastructure assets.

6. Compliance with Cross-cutting Authorities

There are a number of federal laws, executive orders, and federal policies that apply to projects and activities receiving federal financial assistance, regardless of whether the federal laws authorizing the assistance make them applicable. These federal authorities are referred to as cross-cutting authorities or cross-cutters. All cross-cutters apply to Equivalency projects.

The cross-cutters can be divided into three groups: environmental; social policies; and, economic and miscellaneous authorities.

- Environmental cross-cutters include federal laws and executive orders that relate to preservation of historical and archaeological sites, endangered species, wetlands, agricultural land, etc. This cross-cutter requirement includes a National Environmental Policy Act (NEPA) compliant environmental review. When conducting the NEPA-like review the TWDB will inform EPA when consultation or coordination by EPA with other federal agencies is necessary to resolve issues regarding compliance with applicable federal authorities.
- Social policy cross-cutters include requirements such as minority and women's business enterprise participation goals, equal opportunity employment goals, and nondiscrimination laws. This cross-cutter requirement includes compliance with the EPA's Disadvantaged Business Enterprise program administered by TWDB.
- Economic cross-cutters directly regulate the expenditure of federal funds such as the prohibition against entering into contracts with debarred or suspended firms.

The Equivalency projects that are considered federal are those entered into the Federal Funding Accountability and Transparency Act Subaward Reporting System.

7. Financial, Managerial, and Technical (FMT) Capacity

Prior to receiving or closing a commitment, the TCEQ will conduct a review of each applicant's FMT capacity. All applicants must receive FMT approval before closing on financial assistance funding.

8. Competency Statements

The following competency statements are provided to satisfy the EPA's policy entitled "Policy to Assure Competency of Organizations Generating Environmental Measurement Data under Agency Funded Assistance Agreements."

A. TWDB Competency Statement

TWDB ascertains that competency can be demonstrated by the following:

1. The "TWDB Quality Management Plan," was approved by EPA Region 6 on September 16, 2021. The plan demonstrates competency by providing a description of the quality policies including all requirements described in EPA QA/R-2.

B. TCEQ Competency Statement

TCEQ ascertains that competency can be demonstrated by the following:

1. EPA approval of the "Quality Assurance Project Plan for the Public Water Supply Supervision Program Relating to the Safe Drinking Water Act of the Texas Commission on Environmental Quality", Revision 13, Amendment # 1 (QTRAK #20-054), approved by EPA on November 4, 2019, which is approved through November 14, 2022
2. The "TCEQ Quality Management Plan, Revision 27 (2022)" (QTRAK# 22-073) approved on December 20, 2021 by EPA Region 6 which demonstrates competency by providing a description of the quality policies including all requirements described in EPA QA/R-2.

9. Compliance with Capacity Development Authority, Capacity Development Strategy and Operator Certification Program

A. Capacity development authority. The State of Texas, through the TCEQ, has the legal authority to ensure that all new community water systems, and new nontransient, noncommunity water systems that commence operations have demonstrated FMT capacity with respect to national primary drinking water regulations. If DWSRF financial assistance is being provided to the new system, TCEQ conducts and provides to TWDB the results of its FMT assessment prior to closing on the financial assistance.

B. Capacity development strategy. The State of Texas, through the use of DWSRF set-asides provided to TCEQ, implements a strategy to assist public water systems in acquiring and maintaining financial, managerial, and technical capacity. The TWDB has set aside funds from the FFY 2022 grant for TCEQ to implement a capacity development strategy. TCEQ will use funds from the State Program Management, Small Systems Technical Assistance, and Local Assistance and Other State Programs set-asides to conduct the capacity development activities. The TCEQ demonstrates compliance with the Capacity Development Strategy requirement of the SDWA by annually submitting the Capacity Development Report to EPA. The most recent report was provided to EPA on November 22, 2021. The TCEQ submitted the

TCEQ Triennial Progress Report to the Governor on the Public Water Supply Capacity Development Program on September 30, 2020 as required by SDWA Section 1420(c)(3).

- C. Operator certification program. The State of Texas, through the TCEQ, has a program for certifying operators of community and nontransient, noncommunity public water systems. The TCEQ demonstrates compliance with the Operator Certification Program Provisions by annually submitting an Operator Certifications Program Report to EPA. The most recent report was provided to EPA on September 9, 2021.

10. Signage

DWSRF projects must comply with the EPA signage requirements that pertain to the lead service line replacement funding.

B. Assurances

Entry into the Federal Reporting Systems

The TWDB will enter information into EPA's DWSRF Reporting System, the DWSRF National Information Management System, and the Federal Funding Accountability and Transparency Act Sub-Award Reporting System as required.

Appendix F. Bypass Procedures

The Executive Administrator may decide to bypass, or skip, higher ranked projects in favor of lower ranked projects to ensure that funds available are utilized in a timely manner and that statutory and capitalization grant requirements are met. If an entity is offered funding for any project that has an interrelated project ranked lower on the list, the TWDB Executive Administrator will have discretion to also offer funding for the interrelated project.

Reasons for bypassing projects are listed below, but are not limited to:

1. Fulfill the Additional Subsidization Requirement

A project on the PPL or IIPL may be bypassed to fulfill the federal additional subsidization requirement.

2. Intent to Apply and Application Submission Deadlines

A project may be bypassed if the applicant did not submit any intent to apply form or information by a specified deadline or the application is not received by the TWDB-established submission deadline and it is not administratively complete by the established deadline.

3. Readiness to Proceed

The Executive Administrator may bypass projects to include those deemed ready to proceed to construction.

4. Past Project Performance

If the applicant has failed to close a commitment or complete a project in a timely manner under a prior IUP, and it is determined that such failure to perform could jeopardize the timely use of funds for a project under this IUP, the Executive Administrator may bypass the project.

5. Financial Capacity

A project may be bypassed if the Executive Administrator determines that the applicant will be unable to repay the SRF financial assistance for the project.