

January 14, 2022

Radhika Fox
Assistant Administrator for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**Re: Equitable Implementation of New SRF Funding Provided by the
Infrastructure Investment and Jobs Act of 2021**

Dear Assistant Administrator Fox,

On behalf of the undersigned organizations, thank you for expressing your intent to invite wide input on the Environmental Protection Agency's implementation of the State Revolving Fund (SRF) provisions of the Infrastructure Investment and Jobs Act (IIJA). Moreover, we particularly appreciate your stated commitment to allocating funding to the communities that need it most, a critical priority that we share but that the SRF programs have not always achieved.

The IIJA will infuse more than \$40 billion of new funding into the SRF programs over the next five years, providing much-needed federal support for drinking water, wastewater, and stormwater projects. Distributing these resources will require close collaboration between EPA, the states, communities, and advocates, and we look forward to engaging with you throughout the process.

While we look forward to structured opportunities for consultation, we know that your office is already hard at work developing guidance to states, tribes, and territories (hereinafter "states") on implementation of the IIJA funds. Therefore, we want to share some high-level concerns and recommendations now. Additionally, although in this letter we focus specifically on the SRFs, the same core concepts apply to distribution of the non-SRF water infrastructure funding from IIJA (and hopefully from the Build Back Better Act).

We share below our principles for equitable implementation of the new funding and request that you take three near-term actions to advance equity and environmental justice in the SRF programs.

Principles for Equitable Implementation of New SRF Funding

We believe the following objectives must guide EPA's implementation of the new SRF funding.

- EPA and the states meet the goal established in Executive Order 14008 of directing at least 40% of the benefits of funding to disadvantaged communities.
- Disadvantaged, underserved, and environmental justice communities – in both rural and urban areas – are included in state intended use plans/project lists and receive funding priority, especially priority for grants and principal forgiveness (additional subsidization).
- The funding is distributed equitably within communities as well as between them.

- The funding substantially and measurably increases the number of communities with access to safe, affordable water and sanitation.
- Funding decisions reflect input from community residents and advocates following an inclusive and transparent process.
- The funding builds capacity among local advocates working in their communities.
- The funding is harmonized with other federal funding programs beyond the SRFs to fully meet communities' needs.
- The funding assists disadvantaged communities in mitigating and adapting to climate change and natural hazards.

Requests for Near-Term Agency Actions

We ask the agency to take three actions, as soon as possible, to ensure that these equity objectives are met.

First, as the agency develops IJA implementation guidance for state SRF administrators, EPA must proactively seek and consider the feedback of environmental justice and disadvantaged communities that have encountered obstacles to accessing SRF funding. While we understand that EPA plans to conduct community outreach at some point in 2022, it must do so early enough to incorporate that input into the guidance document currently under development. We urge EPA not to prioritize the speed of implementation over the consideration of equity goals and community voices.

Second, we ask EPA to address the following topics in its forthcoming guidance to the states.

- **Eligibility for additional subsidization funds.** EPA should make clear that IJA requires that the 49% of new SRF funds provided as grants and principal forgiveness be reserved for applicants that would otherwise be eligible for additional subsidization under the existing statutory framework (primarily disadvantaged communities). Some of our organizations joined the attached letter to the White House Environmental Justice Advisory Council dated December 2, 2021, emphasizing this critically important point. Many disadvantaged communities are unable to take on additional debt – or struggle to do so without burdening those customers who are least able to pay – which makes grants and principal forgiveness critical for them to benefit from the SRF program.
- **Criteria used to identify disadvantaged communities.** Many of our organizations have concerns about states' "affordability criteria," which define eligibility for additional subsidization but often fail to identify the communities most in need of federal resources. EPA should provide best practices and other recommendations to help states develop SRF affordability criteria that will result in more equitable funding decisions.
- **Expectations for compliance with Title VI of the Civil Rights Act.** EPA should detail, in the most specific terms possible, states' and recipients' legal obligations to avoid disparate impacts in the distribution and spending of this funding. Existing EPA guidance on the application of Title VI to SRF programs is vague and does not explain how the policies, criteria, or methods states and recipients use to make funding decisions might

result in discriminatory effects. For example, a recently-published peer-reviewed study documents the discriminatory effect of requiring individual property owners to contribute to the cost of lead service line replacements.¹ EPA should advise states and recipients on how to avoid such effects, set expectations for the tracking and reporting of any demographic or other data EPA will collect to determine compliance, and signal that it will carry out routine compliance checks and enforce the law in states where disparate impacts may occur. EPA should also ensure robust coordination with other federal agencies regarding states' and recipients' compliance with other civil rights laws relevant to water services, such as the Fair Housing Act. At minimum, EPA should expressly discuss recipients' other civil rights obligations and the need to ensure compliance with them in its guidance.

- **Equity best practices for state SRF programs.** EPA should recommend SRF policies and program designs that would improve equity in funding distribution and use, with examples from relevant states as applicable. These best practices should include:
 - A recommended methodology for ranking and prioritizing projects and applicants in disadvantaged communities and, within those communities, projects that address the most urgent public health issues.
 - Suggestions for structuring additional subsidization rules so they remove barriers to participation faced by many disadvantaged communities.²
 - Guidelines for robust public engagement and community outreach in developing intended use plans and project priority lists.³
 - Recommendations for eliminating procedural hurdles that prevent disadvantaged communities from accessing funds.
 - Recommendations for using SRF funds to support capacity-building in disadvantaged and underserved communities and to provide proactive outreach and technical assistance to such communities to apply for funding.
 - Recommendations to disallow use of SRF funds for partial lead service line replacements (which can increase lead levels) and to discourage requirements for property owner contribution to the cost of LSL replacement, as these have been shown to result in disproportionately few replacements of lead lines in low-income areas and communities of color.

- **Use of EJ screening tools in SRF programs.** EJSCREEN and other environmental justice screening tools can help states direct SRF funding to the communities that need it most. But EPA must help states understand how the tools work, establish guidelines for using them in this particular context, and provide resources for states developing their own EJ screening tools. EPA should also highlight the extent to which these tools include

¹ Baehler et al., “Full Lead Service Line Replacement: A Case Study of Equity in Environmental Remediation,” *Sustainability* 2022, 14, 352, <https://doi.org/10.3390/su14010352>.

² For example, EPA should discourage states from placing caps on the percentage of project costs that can be funded with additional subsidization, or from requiring communities to provide project funding upfront and wait for the state to reimburse them with additional subsidization later. By definition, disadvantaged communities struggle to access funds for capital spending, which can make these practices insurmountable barriers to participation.

³ For example, EPA should ensure that states adequately advertise the timing of comment periods and provide enough time for members of the public to prepare and submit feedback on proposed plans.

important water quality, security, and affordability indicators, and if they do not, the timeline on which the agency intends to develop them.

- **Obligation to update intended use plans to conform with new guidance.** Many states have developed intended use plans not only for 2022 but also for 2023 and beyond. If new EPA guidance is to have any effect on improving equity in the SRF programs, states must be required to comprehensively and holistically update their IUPs – with robust public participation – to reflect the contents of that guidance. Members of the public must be provided adequate notice and time to comment on proposed updates. Indeed, annual updates of IUPs with robust public participation are required by EPA regulations.⁴ Moreover, to ensure meaningful opportunities for public input, EPA should encourage states to go above-and-beyond a formal notice and comment process by engaging community and other stakeholders as a draft IUP is being developed. Community members commonly have the experience that, once a formal draft is published, states are unwilling to seriously consider substantive changes based on public comments.

Third, we ask that EPA coordinate with other federal agencies to promptly establish an interagency water infrastructure funding ombudsman or “help desk.” This service is needed to help communities understand how other federal programs, including those run by other agencies, can work in tandem with SRF funds to meet their needs, for example by supplementing SRF awards or providing funding for costs that the SRF does not cover.⁵ While the Water Infrastructure and Resiliency Finance Center provides much of this information already in its online financing clearinghouse, a more active help center would prove useful to communities that lack the resources and/or expertise to navigate the Finance Center’s materials on their own. Several states have already demonstrated the benefits of a holistic, cross-programmatic approach to water infrastructure funding, including Administrator Regan’s home state of North Carolina.

Looking Ahead: Technical Assistance, Outreach, and Capacity-Building

These three near-term actions represent only the first step in IJA implementation, and we recognize that EPA also plans to undertake significant technical assistance, outreach, and capacity-building efforts over the coming year and beyond to support states and communities in equitably distributing the influx of new funding. We urge the agency to allocate much or most of the approximately \$1 billion in IJA’s authorized set-aside funding “for salaries, expenses, and administration” to proactive outreach and assistance activities that help disadvantaged communities and small systems apply for and obtain funds. Our organizations will have specific recommendations to share with you in the near future about these efforts, including decision-support tools the agency should develop, and we look forward to engaging with you throughout that process.

⁴ See 40 C.F.R. §§35.3150 & 35.3555.

⁵ Other relevant federal programs include, for example, the Department of Housing and Urban Development’s Community Development Block Grant Program, which has been used to pay the portion of a project’s cost that is not covered by SRF principal forgiveness in some instances; the Department of Agriculture’s Rural Utilities Service water and wastewater infrastructure programs; and the Army Corps of Engineers “section 219” program.

Thank you for considering our recommendations. Our organizations may be in further touch with you, collectively and/or individually, to share additional details. As EPA moves forward with IJA implementation, we ask that the agency regularly convene key stakeholders, including community-based organizations. We would also welcome the opportunity to facilitate a briefing for you and your staff by state and local water advocates and community leaders who have first-hand experience with the challenges and advantages of various state SRF policies as well as the challenges communities face more broadly in securing equitable access to federal water infrastructure funding.

Sincerely,

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