



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

OFFICE OF WATER

September 11, 2020

MEMORANDUM

SUBJECT: State Revolving Fund Capitalization Grant Reallotment Procedure

FROM: Jennifer L. McLain, Director
Office of Ground Water and Drinking Water

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TO: Water Division Directors
Regions 1-10

This memorandum explains the procedure for capitalization grant reallotment in the Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF) programs. While the Environmental Protection Agency (EPA) performs the actual reallotment separately for each SRF, the Offices of Ground Water and Drinking Water (OGWDW) and Wastewater Management (OWM) intend to implement a similar streamlined procedure for each program to the extent that current law and regulation allow.

Each year, EPA will assess whether there exists any unobligated SRF funds meeting at least one of the circumstances below. If such funds exist, EPA will initiate this reallotment procedure.

The Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) direct EPA to reallot capitalization grant funds under certain circumstances:

- 1) If allotted funds remain unobligated after the second fiscal year of availability (e.g., if a state has chosen not to apply);¹
- 2) If a state has made unsatisfactory progress with corrective actions under notices of noncompliance and EPA deobligates suspended grant payments from the state;²
- 3) If, in the DWSRF, a state loses primary enforcement responsibility for public water systems (i.e., primacy) and funds remain available after EPA reserves funds to directly implement primacy in the state;³ or,
- 4) If, in the DWSRF, a state fails to meet the SDWA's capacity development and/or operator certification requirements and EPA makes the associated mandatory capitalization grant withholdings,⁴ and those withheld funds remain unobligated after the second fiscal year of availability.

EPA will use the procedure below for these listed circumstances.

¹ 33 USC §1384(c)(2) and 42 USC 300j-12 (a)(1)(E)

² 33 USC §1385(c) and 42 CFR §35.3585(c)(2)

³ 42 USC 300j-12 (a)(1)(F)

⁴ 42 USC 300j-12 (a)(1)(G)

Entities Eligible for Reallotted Funds

All CWSRF programs (the 50 States and Puerto Rico) that received their full CWSRF allotment within the first year of availability are statutorily eligible for reallotted funds. The full CWSRF allotment includes capitalization grants and grants provided under CWA section 604(b). The District of Columbia and the Territories of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands are also eligible for reallotted funds if they received their full allotment within the first year. Tribes are not eligible because they are not allotted funds under CWA section 604.⁵ Instead, tribal funding is provided under CWA section 518(c).⁶

All DWSRF programs (the 50 States and Puerto Rico) that received their full DWSRF allotment within the two years of availability are statutorily eligible for reallotted funds. Tribes and the District of Columbia are also eligible.⁷ The Territories of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands are not eligible because those entities are not defined as “States” under SDWA section 1452.⁸

Timing, Reallocation Formula, and Notification of Eligible Entities

In October of each federal fiscal year, OGWDW and OWM will assess whether there are any unobligated SRF funds meeting at least one of the above circumstances. If such funds exist, EPA will initiate this reallocation procedure.

For the CWSRF, funds will be reallotted based on the state and territory percentages provided under the CWA.⁹ EPA will proportionally increase these percentages by removing ineligible recipients that did not receive their full CWSRF allotment within the first year of availability. Reallotted amounts will not be subject to CWA section 604(b), which requires a small portion of an allotment be reserved for water quality planning activities.¹⁰

For the DWSRF, the reallocation formula will be the same as was originally used to allot those funds, removing states that did not receive their full capitalization grants within the two-year period of availability. Notably, the SDWA allows EPA to reserve up to 10 percent of funds available for reallocation to provide additional assistance to Tribes.¹¹ OGWDW will make the Tribal allotment amount decision at the time of reallocation. For example, if the funds available for reallocation were originally appropriated by Congress in FY 2019, EPA would determine the amount of funds (up to 10 percent) to reserve for tribes, remove ineligible states, and then use the DWSRF allotment formula from FY 2019 for the remaining eligible entities.

OGWDW and OWM will announce the availability of reallotted funds via memorandum to the Regions by the end of November each year. EPA will also post the memorandum on the public SRF websites. The Offices will issue the memorandum only in years in which there are reallocation funds available.

⁵ 33 USC §1384(c)(2)

⁶ 33 USC §1377(c)

⁷ 42 USC 300j-12 (a)(1)(E)

⁸ 42 USC 300f (13)(B)

⁹ 33 USC §1285(c)(3)

¹⁰ 33 USC §1384(b)

¹¹ 42 USC 300j-12 (a)(1)(E)

Eligible entities will have until the end of the fiscal year (i.e., until September 30 of the following calendar year) to apply for and receive their portion of the reallocated funds. Any available funds remaining unawarded after the end of the fiscal year will be included in the next year's reallocation calculation.

Administering the Reallocated Funds

Reallocated funds carry all program requirements and authorities associated with that appropriation's funds. For example, if the reallocated funds originate from Congress's FY 2019 appropriation, the FY 2019 terms and conditions – such as state match, green project reserve (GPR), additional subsidy, and the authority to take set-asides – also apply to the reallocated funds. The fund availability memorandum described above will explain any unique requirements for the reallocated funds.

Regions have three mechanisms to award these funds to eligible entities and should endeavor to streamline their process to the extent possible. Regions and states should collaborate to determine the best option under their circumstances.

- 1) **Regions may award the funds by amending existing, open capitalization grants associated with the reallocated funds.** For example, if the reallocated funds originate from the FY 2019 appropriation, Regions may add those reallocated funds onto states' open FY 2019 capitalization grants. This may be the least administratively burdensome and will ensure that the appropriate terms and conditions apply.
- 2) **Regions may award the funds concurrently with a future capitalization grant award.** For example, if the reallocated funds originate from the FY 2019 appropriation, Regions may add those reallocated funds onto states' FY 2021 capitalization grants. While this avoids grant amendments, the state and Region must be particularly mindful of potentially different terms and conditions associated with funds within the same capitalization grant, which must be addressed.
- 3) **Regions may award the funds as a separate grant award.** For example, if the reallocated funds originate from the FY 2019 appropriation, EPA may award it as a freestanding grant. This may be the most administratively burdensome for both the states and Regions but may be useful in certain circumstances.

Eligible entities should work with their EPA Regional office to submit an acceptable and timely application.

Expectations for Reallocated Funds

Like other SRF funds, states must make binding commitments with the reallocated funds in an amount equal to the amount of each capitalization grant payment and accompanying state match within one year after the receipt of each grant payment.¹² Reallocated funds must be expended in an expeditious and timely manner to minimize unliquidated obligations.¹³

If you have questions on the implementation of this policy, please contact Raffael Stein, Director, Water Infrastructure Division @ stein.raffael@epa.gov or Anita Thompkins, Director, Drinking Water Protection Division @ thompkins.anita@epa.gov.

¹² 33 USC §1384(b)(3) and 42 CFR §35.3550(e)(1)

¹³ 33 USC §1384(b)(4) and 42 CFR §35.3550(f)