

ENVIRONMENTAL PROTECTION AGENCY

CFDA 66.458 CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

CFDA 66.482 DISASTER RELIEF APPROPRIATIONS ACT (DRAA) HURRICANE SANDY CAPITALIZATION GRANTS FOR CLEAN WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to states to create and maintain Clean Water State Revolving Funds (CWSRFs) to (1) enable states to encourage construction of wastewater treatment facilities to meet the enforceable requirements of the Clean Water Act (Act); (2) increase the emphasis on nonpoint source pollution control and protection of estuaries; and (3) establish permanent financing institutions in each state to provide continuing sources of financing to maintain water quality.

II. PROGRAM PROCEDURES

The CWSRF program is established in each state by capitalization grants from the Environmental Protection Agency (EPA). The CWSRF provides loans and other types of financial assistance to qualified communities and local agencies. The CWSRF is a permanent revolving fund to provide loans and other assistance. Since the enabling legislation was enacted in 1987, capitalization grants have been available to states in most years. EPA implements the CWSRF in a manner that preserves a high degree of flexibility for states in operating their revolving funds in accordance with each state's unique needs and circumstances.

States are required to provide an amount equal to 20 percent of the capitalization grant as state matching funds to receive a grant. Capitalization grant applications must include (1) an Intended Use Plan (IUP), which lists proposed projects eligible for financing from CWSRF loans; (2) an identification of the source of the matching amount; (3) a proposed payment schedule; and (4) certain certifications and demonstrations. States may transfer an amount up to 33 percent of its Drinking Water State Revolving Fund (DWSRF) (CFDA 66.468) capitalization grant to the CWSRF or an equivalent amount from the CWSRF to the DWSRF program.

The Disaster Relief Appropriations Act (Pub. L. No. 113-2) provided funds for awards to the states of New York and New Jersey for wastewater facilities impacted by Hurricane Sandy. EPA awarded these funds under CFDA 66.482. Those funds are subject to all the compliance requirements that apply to CFDA 66.458 except as indicated in III, "Compliance Requirements" of this program supplement.

Source of Governing Requirements

The CWSRF program is authorized under Title VI of the Clean Water Act (33 USC 1381 *et seq.*) (Act), Subtitle A: Provisions in Title VI of the Water Resources Reform and Development Act of 2014 (WRRDA) (Pub. L. No. 113-121), amending the Federal Water Pollution Control Act

(FWPCA), and the Disaster Relief Appropriations Act (Pub. L. No. 113-2). The implementing regulations are found in 40 CFR part 35, subpart K.

Availability of Other Program Information

General information about the program is available on the EPA Clean Water State Revolving Fund home page (<https://www.epa.gov/cwsrf>).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	N	N	N

A. Activities Allowed or Unallowed

1. *Financial Assistance*

- a. The CWSRF may provide financial assistance (1) to municipalities, inter-municipal, interstate, or state agencies for the construction of publicly owned treatment works, as defined in section 212 of the Act that are on the state’s project priority list; (2) for implementing nonpoint source management programs under section 319 of the Act; (3) for developing and implementing estuary management plans under section 320 of the Act

(33 USC 1383(c)); (4) for the construction, repair or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage; (5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water; (6) to any municipality, or intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse; (7) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the Act; (8) to any municipality, or intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works; (9) for reusing or recycling wastewater, stormwater, or subsurface drainage water; (10) for measures to increase the security of publicly owned treatment works; and (11) to any qualified nonprofit entity, as determined by the EPA Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works to

- (1) plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and,
- (2) assist such treatment works in achieving compliance with the Act.

b. The allowable types of financial assistance under CFDA 66.458 (33 USC 1383(d)) are:

- (1) Making loans for eligible projects;
- (2) Buying or refinancing of debt obligations of municipal, intermunicipal, and interstate agencies incurred after March 7, 1985;
- (3) Guaranteeing or purchasing insurance for local debt obligations;
- (4) Using as a source of revenue or security for CWSRF debt obligations (providing that the net proceeds of the sale of such bonds are deposited in the CWSRF); and
- (5) Guaranteeing loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies.

c. Funds awarded under CFDA 66.482 may be used only for projects to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).

2. *CWSRF funds may be used by states for the reasonable costs of administering and managing the CWSRF (33 USC 1383(d)(7)).*

See III.G.3.a, “Matching, Level of Effort, Earmarking – Earmarking.”

3. *CWSRF funds may be used by states to provide additional subsidization in the form of principal forgiveness, grants, and negative interest loans to municipal, intermunicipal, interstate, or state agencies receiving CWSRF assistance.*

Additional subsidy may be provided to (a) implement a process, material, technique, or technology to address water or energy-efficiency goals; (b) mitigate stormwater runoff; (3) encourage sustainable project planning, design, and construction; or (4) a municipality that meets the state’s affordability criteria or seeks additional subsidization to benefit individual ratepayers in the residential user rate class who would otherwise experience significant financial hardship (33 USC 1383(i)(1)).

See III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking.”

C. Cash Management

The state may draw cash from EPA through the Automated Standard Application for Payments (ASAP) system for:

1. *Loans* – when the CWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.
2. *Refinance or Purchase of Municipal Debt* – generally, when at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt.
3. *Purchase of Insurance* – when insurance premiums are due.
4. *Guarantees and Security for Bonds* – immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to an amount dedicated for the guarantee or security based on incurred construction costs.
5. *Administrative Expenses* – cash can be drawn based on a schedule that coincides with the rate at which administrative expenses will be incurred. (40 CFR section 35.3160)

G. Matching, Level of Effort, Earmarking**1. Matching**

States are required to deposit into the CWSRF from state monies, an amount equal to 20 percent of each grant payment. If the state provides a match more than the required amount, the excess balance may be banked toward subsequent match requirements. States generally report the total amount of their matching for a capitalization grant in an annual CWSRF report to EPA. The match is required to be made on or before the time that EPA funds are drawn (40 CFR section 35.3135(b)).

2. Level of Effort

Not Applicable

3. Earmarking

- a. The maximum amount allowable for administering and managing the CWSRF is an amount equal to 4 percent of the cumulative amount of capitalization grant awards received (less any amounts used in previous years to cover administrative expenses), \$400,000, or 1/5 percent of the current valuation of the fund, whichever is the greatest. The valuation of the fund is defined as the Total Net Position in the most recent year's audited financial statements for the state CWSRF program. When the administrative expense of the CWSRF exceeds the largest of these amounts, the excess must be paid from sources outside the CWSRF (40 CFR section 35.3120(g)).
- b. The Disaster Relief Appropriations Act (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31) includes a requirement to provide subsidies in the amount shown in the table below. The FY 2017 and FY 2018 appropriations (Pub. L. No. 115-31 and Pub. L. No. 115-141) require 10 percent of the capitalization grant be used for additional subsidy. In addition, the 2014 Water Resources Reform and Development Act allows additional subsidy if the amount appropriated for capitalization grants to all states in a fiscal year exceeds \$1,000,000,000. The additional subsidy allowed is based on the percentage over \$1,000,000,000 that is appropriated. For FY 17 and FY 18, a state could not use more than 30% for additional subsidy. In future years, if the appropriated amount is less than 30% of \$1,000,000,000, that percentage would be substituted for the 30%. The subsidy can be provided in the form of grants, principal forgiveness, or negative interest as specified in III.A.3, "Activities Allowed or Unallowed."

Disaster Relief Funds	FY 2017 and FY 2018 Funds
Not less than 20 percent and not more than 30 percent of the capitalization amount	Ten percent of the capitalization grant amount, in addition to the option of up to 30 percent of the capitalization grant amount for recipients that are municipal, intermunicipal, interstate, or state agencies

- c. To the extent that there are sufficient eligible project applications, no less than 10 percent of appropriated funds shall be used for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities (Pub. L. No. 112-74; Pub. L. No.113-121; Pub. L. No. 114-113).

H. Period of Performance

- Grant payments from a capitalization grant shall begin in the quarter in which the grant is awarded, and end no later than eight quarters after the grant is awarded, not to exceed 12 quarters from the date of allotment of grant funds to the states (40 CFR section 35.3155(c)).
- Funds made available for disaster relief activities under CFDA 66.482 are available until expended (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).

IV. OTHER INFORMATION

The audit focus is on a state's CWSRF program rather than individual capitalization grants awarded to states by EPA.

Subrecipients

CWSRF amounts are awarded by EPA to states as grants. The states then makes subawards in the form of loans to its subrecipients. Therefore, in determining the amount of federal funds expended to be reported on the Schedule of Expenditures of Federal Awards (SEFA), subrecipients receiving CWSRF loans should include project expenditures incurred under these loans during the audit period as provided in 2 CFR section 200.502(a). These are subawards—not direct federal loans—and, therefore, neither 2 CFR sections 200.502(b) nor (d) apply when calculating the amount of federal funds expended.

It also is important to appropriately identify these CWSRF loans as subawards because of the impact on which federal agency is the cognizant or oversight agency. When completing the SF-SAC, the subrecipient should indicate that a CWSRF loan received from the state is not a direct award by showing an "N" in Part III, Item 6(h).

Equivalency

Equivalency projects/loans are funded with an amount equal to the capitalization grant and reported in the OMB Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System. These projects/loans are considered to be federal projects/loans. To achieve

consistency in meeting program requirements and eliminate the possibility of over-reporting information under FFATA, equivalency projects/loans must meet all equivalency requirements: federal cross-cutters, single audit, architectural and engineering (A/E) procurement, disadvantage business enterprise (DBE), and signage.

While any of the sources of funds in the CWSRF may be used for equivalency projects/loans, it should be understood that these funds would be considered federal funds and that all disbursements for equivalency projects/loans must be entered into the SEFA.

ENVIRONMENTAL PROTECTION AGENCY

CFDA 66.468 CAPITALIZATION GRANTS FOR DRINKING WATER STATE REVOLVING FUNDS

CFDA 66.483 DISASTER RELIEF APPROPRIATIONS ACT (DRAA) HURRICANE SANDY CAPITALIZATION GRANTS FOR DRINKING WATER STATE REVOLVING FUNDS

I. PROGRAM OBJECTIVES

Capitalization grants are awarded to states to create and maintain Drinking Water State Revolving Funds (DWSRF) programs. States can use capitalization grant funds to establish a revolving loan fund (DWSRF) to assist public water systems finance the costs of infrastructure needed to achieve or maintain compliance with Safe Drinking Water Act (SDWA) requirements and protect the public health objectives of the Act.

II. PROGRAM PROCEDURES

The DWSRF program is established in each state by capitalization grants from the Environmental Protection Agency (EPA) and state match equaling 20 percent of the EPA capitalization grants.

EPA implements the DWSRF program in a manner that preserves flexibility for states in operating their program in accordance with their unique needs and circumstances. States have the flexibility to set aside some of their capitalization grants for other related activities. States may also transfer an amount up to 33 percent of its DWSRF capitalization grant to the Clean Water State Revolving Fund (CWSRF) (CFDA 66.458) or an equivalent amount from the CWSRF to the DWSRF program. A state may transfer capitalization grant dollars, state match, investment earnings, or principal and interest repayments.

Capitalization grant agreements include (1) an application; (2) an Intended Use Plan (IUP), which describes how the state intends to use funds made available to it, including a list of proposed projects eligible for financing and a description of the financial status of the program; (3) a proposed payment schedule; (4) certain certifications and demonstrations which can be included in an optional operating agreement; and (5) workplans containing a least a general description of the use of set-aside funds.

The state must annually provide an IUP which describes how the state will use available DWSRF program funds for the year to meet the objectives of the SDWA and further the goal of protecting public health. The IUP explains how all of the funds available to the DWSRF program (including bond proceeds, interest earnings, loan repayments, federal capitalization grants, state match, etc.) will be expended.

The Disaster Relief Appropriations Act (Pub. L. No. 113-2) provided funds for awards to the states of New York and New Jersey for drinking water facilities impacted by Hurricane Sandy. EPA awarded these funds under CFDA 66.483. Those funds are subject to all of the compliance

requirements that apply to CFDA 66.468 except as indicated in III, “Compliance Requirements,” in this program supplement.

Source of Governing Requirements

This program is authorized under Section 1452 of the Public Health Service Act (Title XIV), commonly known as the SDWA (42 USC 300j-12) and the Disaster Relief Appropriations Act, 2013 (Pub. L. No. 113-2). The implementing regulations for the program can be found at 40 CFR part 35, subpart L.

Availability of Other Program Information

Other general information about the program is available on the EPA Drinking Water State Revolving Fund home page (<https://www.epa.gov/drinkingwatersrf>).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	N	N	N

A. Activities Allowed or Unallowed1. *Activities Allowed*

- a. A state DWSRF program may provide the following financial assistance to publicly or privately owned community water systems and non-profit non-community water systems for eligible drinking water infrastructure projects (40 CFR sections 35.3520 and 35.3525):
 - (1) Making loans for eligible projects (40 CFR section 35.3520(b).
 - (2) Purchasing or refinancing existing debt obligations of municipal, intermunicipal and interstate agencies entered into on or after July 1, 1993. Purchase of local debt would have the expectation that the seller would repay the debt at the agreed upon terms.
 - (3) Guarantee of or purchasing insurance for local debt obligations.
 - (4) Providing a source of revenue or security for DWSRF debt obligations, provided that the net proceeds of the sale of such debt obligations are deposited in the DWSRF.
 - (5) Funds awarded (all manner of assistance, both a loan or grant to a local entity) under CFDA 66.483 may be used only for projects to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31).
- b. A state may set aside DWSRF funds for the following designated activities (40 CFR section 35.3535):
 - (1) Administrative expenses (including technical assistance).
 - (2) Technical assistance to small water systems that regularly serve 10,000 or fewer persons (40 CFR section 35.3505).
 - (3) State program management.
 - (4) Local assistance and other state programs.

2. *Activities Unallowed*

As per 40 CFR 35.3520(d) through (f), a state DWSRF program may not provide assistance for:

- a. Dams or reservoirs, water rights, laboratory fees for monitoring, system operation and maintenance, or projects that are primarily fire protection.
- b. Expansion projects pursued solely in anticipation of future growth.

C. Cash Management

The state may draw cash through the Automated Standard Application for Payments (ASAP) system for (40 CFR sections 35.3560 and 35.3565):

1. *Loans* – when the DWSRF receives a request from a loan recipient, based on incurred costs, including pre-building and building costs.
2. *Refinance or Purchase of Municipal Debt* – generally, at a rate not greater than equal amounts over the maximum number of quarters that payments can be made, and up to the amount committed to the refinancing or purchase of the local debt. A state may immediately draw cash for up to the greater of \$2 million or 5 percent of each fiscal year's capitalization grant to refinance costs.
3. *Purchase of Insurance* – when insurance premiums are due.
4. *Guarantees and Security for Bonds* – immediately, in the event of imminent default in debt service payments on the guaranteed/secured debt; otherwise, up to the amount dedicated for the guarantee or security based on actual construction cost.
5. *Set-Asides* – generally, on an incurred cost basis after workplans have been approved by EPA (40 CFR section 35.3560(e)).

G. Matching, Level of Effort, Earmarking

1. Matching

- a. States are required to deposit into the DWSRF from state monies an amount equal to 20 percent of each grant payment. The match is required to be made on or before the time that EPA funds are drawn. When a letter of credit (LOC) mechanism or similar financial arrangement is used for the state match, payments to the LOC account must be made proportionally on the same schedule as payments for the capitalization grant. Monies from this state match LOC must be drawn into the DWSRF as monies are drawn on the federal automated clearinghouse account. A state may issue general obligation or revenue bonds to derive the state match. If the state provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements (40 CFR section 35.3550(g)).

2. Level of Effort

Not Applicable

3. Earmarking

- a. The allotment can be earmarked for set-aside activities as follows:
- (1) *Administrative Expenses* – Not to exceed the higher of 4 percent of the allotment, \$400,000, or 1/5 of a percent of the fund’s annual net position.
 - (2) *Technical Assistance to Small Systems* – Not to exceed 2 percent of the cumulative allotment (40 CFR section 35.3535(c)).
 - (3) *State Program Management* – Not to exceed 10 percent of the cumulative allotment (40 CFR section 35.3535(d)). The cumulative allotment amount will be in state records as their total grants awarded. EPA will have a record of this as well.
 - (4) *Local Assistance and Other State Programs* – Not to exceed 15 percent of the capitalization grant and no more than 10 percent of the grant is used on any one of the defined activities (40 CFR section 35.3535(e)).
- b. For 2018 and previous grants, state cannot use more than 30 percent of any particular fiscal year’s capitalization grant to provide subsidies in the form of principal forgiveness or negative interest rate loans to communities meeting the state’s definition of disadvantaged, or communities the state expects to become disadvantaged as a result of the project (40 CFR section 35.3525(b)). Starting with the 2019 grants, states are required to use between 6 percent and 35 percent of their grant for disadvantaged assistance subsidy, as per the amendments from the American Water Infrastructure Act of 2018.
- c. EPA’s DWSRF appropriations include the following requirements:
- (1) The Disaster Relief Appropriations Act (Pub. L. No. 113-2, Division A, Title X, 127 Stat. 31), FY 2015 appropriation (Pub. L. No. 113-235), and the FY 2016 appropriation (Pub. L. No. 114-113) (and FY 2017 continuing resolution), each have requirements to provide subsidy in amounts found in the table below. This subsidy can be provided in the form of grants, principal forgiveness, or negative interest.

Disaster Relief Funds	FY 2018 Funds	FY 2019 Funds
Not less than 20 percent and not more than 30 percent of the capitalization amount	Twenty percent of the capitalization grant amount	Twenty percent of the capitalization grant amount

- (2) The decision to maintain a category of projects for green infrastructure, water and energy efficiency, and other environmentally innovative activities is at the state's discretion (Pub. L. No. 113-76, Pub. L. No. 113-235, and Pub. L. No. 114-113).

H. Period of Performance

1. Grant payments from a capitalization grant, which increase the ceiling of funds from which a state may draw cash for eligible costs, shall begin no earlier than the quarter in which the grant is awarded, and generally end no later than eight quarters after the grant is awarded, not to exceed twelve quarters from the date of allotment of grant funds to the states. States must enter into binding commitments for an amount equal to each capitalization grant payment and accompanying state match that is deposited into the Fund within one year after the receipt of each grant payment. This does not apply to funds drawn for set-aside activities. States disburse, or liquidate, grant funds for projects in accordance with construction schedules. Funds are disbursed for set-aside activities in accordance with costs being incurred under approved workplans (40 CFR sections 35.3550(e) and 35.3560).
2. Funds made available for disaster relief activities under CFDA 66.483 are available until expended (Pub. L. No 113-2, Division A, Title X, 127 Stat. 31).

IV. OTHER INFORMATION

The audit focus is on a state's DWSRF program rather than individual capitalization grants awarded to states by EPA.

Subrecipients

DWSRF amounts are awarded by EPA to states as grants. The states then make loans to their subrecipients. Therefore, in determining the amount of federal funds expended to be reported on the Schedule of Expenditures of Federal Awards (SEFA), subrecipients receiving DWSRF loans should include project expenditures incurred under these loans during the audit period as provided in OMB Circular A-133 section __.205(a)/2 CFR section 200.502(a). These are not direct federal loans and, therefore, neither OMB Circular A-133 section __.205(b) nor section __.205(d)/2 CFR sections 200.502(b) or (d) apply when calculating the amount of federal funds expended. When completing the SF-SAC, the subrecipient should indicate that a DWSRF loan received from the state is not a direct award by showing an "N" in Part III, Item 6(h).

Equivalency

To achieve consistency in meeting program requirements and eliminate the possibility of over-reporting information under the FFATA, state DWSRF programs must use the same group of loans for the purpose of meeting federal cross-cutting, single audit, procurement, and Transparency Act reporting requirements. Equivalency projects/loans are funded with an amount equal to the capitalization grant. DWSRF set-aside activities are also considered federal

expenditures. Auditors should be mindful that set-aside spending will not always trigger FFATA reporting based on the thresholds for reporting under the law. In addition, for states using the loan authority under the set-aside funds, it is possible those expenditures are repayment dollars from previous loans and should not be considered federal funds. Auditors should consult with the state to make that determination.

While any of the sources of funds in the DWSRF may be used for equivalency projects/loans, it should be understood that these funds would be considered federal funds once they are deemed equivalency dollars and that all disbursements for equivalency projects/loans must be entered into the SEFA. The SEFA should reflect equivalency dollars rather than actual cash draws from the Treasury to the state. Additionally, the SEFA will differ from the SF-425 form.