



**Clean Water Infrastructure Financing:
State and Local Perspectives and Recent Developments
Committee on Transportation & Infrastructure
Subcommittee on Water Resources and Environment
U.S. House of Representatives
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**Testimony of
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Oklahoma Water Resources Board
On behalf of the Council of Infrastructure Financing Authorities (CIFA)**

Chairman Rouzer, Ranking Member Napolitano and members of the Committee, thank you for the opportunity to testify before you today on behalf of the 51 Clean Water State Revolving Funds (SRFs), the nation's premier programs for financing water infrastructure that protects public health and the environment.

My name is Lori Johnson and I am Assistant Chief of the Financial Assistance Division for the Oklahoma Water Resources Board, which manages the Clean Water SRF in the Sooner State. I also serve as Secretary for the Board of Directors of the Council of Infrastructure Financing Authorities (CIFA), which is a national not-for-profit organization that educates and advocates on behalf of the Clean Water and Drinking Water SRFs.

The Clean Water SRFs are a national model for federal investment in infrastructure.

More than three decades ago, Congress established the Clean Water SRFs as federally subsidized loan programs to provide affordable financing for municipal water infrastructure that protects public health and the environment. Since then, the Clean Water SRFs have used \$52 billion in federal capitalization grants to generate \$163 billion in financial assistance for more than 46,000 clean water infrastructure projects in communities across the nation.

Because of Congress' foresight and fiscal responsibility, the Clean Water SRFs are generating a recurring, renewable source of revenue to meet the never-ending need to repair, rehabilitate and replace aging water infrastructure. As of 2022, loan repayments permanently revolving in the Clean Water SRFs topped \$63 billion, exceeding cumulative federal funding and financing projects that may never have been built had Congress created a grant program instead.

The Clean Water SRF subsidized loans save money to keep water bills affordable.

In 2022, the average interest rate on an SRF subsidized loan was 1.2%¹, while the average interest rate on a municipal bond was 3.8%² – more than triple the average SRF interest rate. A utility that finances a \$10 million project through an SRF will save more than \$3.15 million, or 71%, in interest payments, compared to the interest on a municipal bond. Reducing the cost of water infrastructure alleviates pressure on utilities to raise rates for wastewater, stormwater and recycled water services.

The Clean Water SRFs are effective and responsive to communities.

The Clean Water SRFs are effective because federal law allows states to customize their program within a broad federal framework. This flexibility, which is a hallmark of the SRF state-federal partnership, allows the SRFs to be responsive to the diverse and evolving needs of communities across the nation – from small communities such as Tabor City, North Carolina, with a population of 4,000, to urban centers, such as Los Angeles, California, with a population of nearly four million.

The Clean Water SRFs are efficient, low-cost infrastructure funding programs.

The amount of annual federal funding that can be used to administer the Clean Water SRFs is capped at just 4%. To maximize the amount of federal funding for water infrastructure projects, some SRFs use state funding or other revenue sources to pay staff and administrative expenses. To improve the impact and outcomes of federal funding, some SRFs use the administrative allotment to fund technical assistance, apprenticeship programs, or other statewide initiatives.

The Clean Water SRFs efficiently deliver billions in financial assistance every year.

Just last year, the Clean Water SRFs delivered \$9.6 billion in state and federal funding for more than 1,600 water infrastructure projects. More than half of the water infrastructure projects were in small and rural communities with a population of less than 3,500. SRFs are often the only funding option for small and rural communities, which lack the revenue to qualify or afford financing on the municipal bond market.

While well-intended, federal mandates on SRF subsidized loans are increasing the cost of water infrastructure; these costs are then passed onto households and small businesses in higher water bills. Perhaps more importantly, these federal mandates may not be achieving the goals that Congress intended.

¹ According to the U.S. Environmental Protection Agency, the average Clean Water SRF interest rate was 1.2% in 2022.

² According to the Securities Industry and Financial Markets Association, the average interest rate for a 20-year high grade average was 3.8% in 2022.

Since 2009, Congress has added multiple federal mandates on SRF subsidized loans, including state funded loans. Today, federal mandates impact nearly every aspect of a water infrastructure project, including planning and design, procurement of professional services, wages for construction workers, and eligibility of building materials.

Mandate	Enacted	Federally Financed Projects	State Financed Projects
Davis Bacon	2009	✓	✓
American Iron and Steel	2014	✓	✓
Water and Energy Certification	2014	✓	✓
Fiscal Sustainability Plan	2014	✓	✓
Engineering Procurement	2014	✓	
Build America, Buy America	2021	✓	

Davis Bacon Prevailing Wage Laws

Since 2009, annual appropriations bills and subsequently the Clean Water Act have required all SRF projects, including those financed by state funding, to comply with Davis Bacon, which requires construction workers to be paid the federal prevailing wage rate for the county in which the project is built.

For most projects, paying the federal prevailing wages isn't an issue, especially in today's tight labor market which often requires contractors to pay more than the federal prevailing wage to attract and retain skilled workers. The problem is the prescriptive, burdensome and duplicative federal procedures and paperwork required to demonstrate compliance with the federal mandate.

CIFA offers these suggestions to streamline the compliance procedures for Davis Bacon while maintaining the mandate for federal prevailing wages:

- Modernize the contract threshold and index the threshold to inflation: Davis Bacon applies to water infrastructure projects that cost more than \$2,000, a threshold that hasn't been updated since the law was enacted in 1931. For context, the average cost of a water infrastructure project in a small community (fewer than 10,000 people) was \$1.8 million in 2022.
- Allow the use of the wages published by the Department of Labor's Bureau of Labor Statistics in lieu of conformance: Wage determinations are not always available for every job in every county, especially in rural counties. Allowing the use of a trusted, alternative source for wages would eliminate the need for conformance, which can be a lengthy process for getting a wage determination.

- Allow compliance with state prevailing wage laws to satisfy compliance with Davis Bacon: 26 states have state prevailing wage laws and must comply with both federal and state compliance procedures, which is duplicative and increases the cost of compliance but may not benefit workers.
- Allow Governors to develop compliance procedures that better align with state law: The Clean Water Act allows Governors to develop compliance procedures,³ but EPA has not approved implementation of this provision.
- Allow state prevailing wages to be used in lieu of federal prevailing wages: According to a 2019 audit by the Inspector General of the Department of Labor,⁴ the agency adopts state prevailing wages for transportation projects but not for water and other projects. Extending this accepted practice to water infrastructure projects would eliminate duplication and reduce the cost of administration for water infrastructure projects.

American Iron and Steel and Build America, Buy America Act

Two federal mandates for domestic procurement apply to water infrastructure projects financed with SRF subsidized loans.

- Since 2014 annual appropriations bills and subsequently the Clean Water Act have required all SRF projects, including those financed with state funding, to use iron and steel made in the U.S., known as America Iron and Steel (AIS) requirements.
- Since 2021, the Build America, Buy America Act (BABAA) has required all federally funded water infrastructure projects, including federally funded SRF projects,⁵ to use iron, steel, construction materials and manufactured products made in the U.S.

Clear guidance, consistent implementation and equal application of the law are needed to successfully implement BABAA and ensure critical water infrastructure projects remain on track, on time and on budget. With the second anniversary of BABAA quickly approaching, it is imperative that EPA provide detailed guidance for demonstrating compliance with BABAA, especially for manufactured products.

While EPA has issued a waiver for projects that initiated design planning by the effective date of the law, many SRFs no longer have projects that qualify for this waiver. In the absence of clear

³ Clean Water Act 33 U.S.C. §1382 (b) (6) treatment works eligible under this chapter which will be constructed in whole or in part with assistance made available by a State water pollution control revolving fund authorized under this subchapter, or section 1285(m) of this title, or both, will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 1371(c)(1) and 1372 of this title in the same manner as treatment works constructed with assistance under subchapter II of this chapter;

⁴ [Better Strategies are Needed to Improve the Timeliness and Accuracy of Davis-Bacon Prevailing Wage Rates](#), U.S. Department of Labor Inspector General, Report Number 04-19-001-15-001, March 29, 2019

⁵ Federally funded SRF projects include "equivalency projects."

guidance for demonstrating compliance and in an abundance of caution, some SRFs are urging borrowers to apply for a project-specific waiver to avoid potential non-compliance. Until there is clarity on compliance, EPA and the Made In America Office (MIAO) could quickly become overwhelmed with requests for project-specific waivers.

Additionally, EPA has proposed sunseting the current BABAA waiver for SRF projects on September 30, 2024. SRF projects that are eligible for the current waiver, particularly large, multi-year projects that are already under construction, are likely to abandon SRF financing rather than redesign their projects. This unintended consequence will likely increase the cost of water infrastructure, which will be passed onto households and small businesses in higher water bills.

CIFA offers these suggestions for strengthening implementation of and compliance with BABAA:

- A Level Playing Field: The same types of water infrastructure projects are treated differently depending on the agency and program that provides federal funding. As a result, some programs may have more, or less, stringent requirements than other programs, creating inequity among recipients of federal funding. Requiring the same rules for the same types of water infrastructure projects will ensure a level playing field.
 - The EPA, U.S. Department of Agriculture Rural Development, U.S. Department of Interior Reclamation Grants and U.S. Department of Housing and Development Community Development Block Grants have different rules for the same types of water projects, which creates confusion across the water sector, especially for projects that are co-funded.
 - EPA has different rules for different programs that fund the same types of water projects *within* the agency. Several of these programs are delegated to the states and managed by the SRFs, creating even more confusion about rules of compliance.
- Standards for Demonstrating Compliance: The SRFs need clear and consistent guidance for documenting compliance. For example, will manufacturers have to provide documentation for every step in the manufacturing process (supplier, fabricator, manufacturer, processor) and for every subcomponent in a manufactured product (water purification technologies can have hundreds of subcomponents)?
- Conflicting Standards: The SRFs believe AIS and BABAA have conflicting guidance for precast concrete products and subcomponents of iron and steel products. Providing explicit direction, such "compliance with AIS satisfies compliance with BABAA," would ensure consistency for programs with the AIS mandate.
- Codify the Current BABAA Waiver for SRFs: The current BABAA waiver for SRF projects exempts projects that initiated design planning before the effective date of the law. Waiving BABAA requirements for projects that were designed or under construction before the law

took effect ensures communities can maintain affordable SRF financing for their water infrastructure projects without going back to the drawing board.

- Waiver Decisions: The turnaround time for a decision on waivers is unknown. A typical AIS waiver takes about eight weeks. Because the waiver must be approved by both EPA and MIAO, it's anticipated that the turnaround time for a BABAA waiver could take as long as 16 weeks. Requiring a specific turnaround time for waiver decisions is essential for planning purposes and to avoid liquidated damages for contractors that miss deadlines due to BABAA waiver determinations.

Water and Energy Efficiency Certification

Since 2014, the Water Resources Reform and Development Act (WRRDA) has required all SRF borrowers to conduct a cost and effectiveness analysis and certify that their project "maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation."

Conducting a cost and effective analysis increases the cost of water infrastructure projects but may not provide significant, or even measurable, environmental benefits for most SRF projects, especially those in small and rural communities with populations fewer than 10,000 people which comprise two-thirds of SRF loans.

For example,

- Conservation or reducing consumption is an important goal for drinking water projects. However, conservation is challenging for projects that lack a consumption component, such as collecting and treating wastewater and stormwater.
- The analysis is irrelevant, but still required, for projects specifically designed to reuse or recycle water or to reduce energy consumption, which are the goals of the federal mandate.
- The analysis is unnecessary, but still required, for projects that don't use any energy, such as gravitational sewer collection systems, lagoon treatment systems or pipe replacement projects.

SRFs understand the importance of pursuing water and energy efficiency, but allowing SRFs to identify the projects that will benefit from this cost and effectiveness analysis is a more efficient and effective approach for achieving Congress' goals.

Fiscal Sustainability Plan

Since 2014, WRRDA has required *select* SRF borrowers to develop a fiscal sustainability plan for the water infrastructure project being financed. The law requires the plan to include an inventory of critical assets, an evaluation of the condition and performance of assets, and a funding plan to maintain, repair and replace the assets. These select SRF borrowers must also certify implementation of water and energy efficiency as part of the plan.

Complying with this federal mandate increases the cost of water infrastructure but may not further the goal of fiscal sustainability. The federal mandate only applies to projects that receive SRF loans, not to projects that are financed by bonds issued by municipalities and purchased by the SRFs. Additionally, while the fiscal sustainability plan is intended to be a “living document” to improve operations and management, many small and rural communities with few professional staff don’t have the capacity to continually review, revise and implement these plans.

The Clean Water SRFs understand the importance of fiscal responsibility and financial sustainability and conduct a thorough review of an applicant’s financial health as part of their underwriting process before a subsidized loan is awarded. SRFs also provide grant funding for rate studies and asset management plans to foster accountability for the federal and state investment in clean water infrastructure.

Architectural and Engineering Procurement

Since 2014, WRRDA has required borrowers of federally funded SRF projects to use the federal procurement process to select architects and engineers. Established by the Brooks Act, the federal procurement process requires selection based solely on qualifications and prohibits the cost of services from being considered as a factor.

Approximately two-thirds of states have a “mini” Brooks Act which aligns to the federal process and allows for seamless procurement. However, in other states, the federal procurement process conflicts with the state procurement process, making it difficult or impossible to implement.

Even in states where the state and federal procurement process are aligned, this federal mandate poses an obstacle. Many borrowers engage an engineering firm before deciding to pursue SRF financing. Small communities may be prohibited from using an engineer that serves on long-term contract as staff augmentation.

In some states, this requirement deters communities from pursuing SRF financing for planning and design. In other states, the SRFs issue separate loan agreements – one for engineering funded with state money and one for construction funded with federal money – which creates more process, paperwork and expense without more protection for public health and the environment.

The Clean Water SRFs are concerned about the transformation of these state-run, subsidized loan programs into a top-down, one-size-fits-all federal grant program.

In addition to federal mandates on borrowers, federal mandates on the Clean Water SRFs are eroding the lending power of the SRFs. Diverting annual federal funding from the SRFs to provide grants for congressional earmarks and requiring the SRFs to use annual federal funding as grants or principal forgiveness, instead of subsidized loans, reduces leveraging to meet

current demand and permanently eliminates a reliable source of recurring revenue to fund water infrastructure projects in the future.

Transforming the SRF subsidized loan program into a grant program has permanent adverse consequences. Every federal dollar diverted from SRF subsidized loans to congressional earmarks, grants or principal forgiveness permanently eliminates a recurring source of funding to build water infrastructure projects in the future. Unlike grants that fund one project, SRF subsidized loans generate loan repayments that can be used, and reused, in perpetuity to fund multiple water infrastructure projects, alleviating the cost of construction and compliance on future generations.

Additional Subsidy (Grants and Principal Forgiveness)

Federal mandates requiring the SRFs to use annual federal funding as grants or principal forgiveness, instead of subsidized loans, have doubled in the last two years. Increased federal mandates for additional subsidy have coincided with the return of earmarks, which means the majority of annual federal funding is being provided as grants or grant-equivalents, instead of subsidized loans.

Since 2009, appropriations bills have mandated that the SRFs provide a percentage of annual federal funding as grants or principal forgiveness, known as additional subsidy. Since 2021, the Clean Water Act has mandated the Clean Water SRFs provide 10% of their annual federal funding as grants or principal forgiveness. In 2023, the total federal mandate for grants or principal forgiveness is 20% of annual federal funding.

While additional subsidy is an important tool, SRFs believe it should only be used when absolutely necessary to help communities that couldn't otherwise afford to build clean water infrastructure. A one-size-fits-all federal mandate for additional also ignores the variability of need from state to state. For example, states with generous state grant programs for water infrastructure could use 100% of annual federal funding for SRF subsidized loans.

Additionally, the Infrastructure Investment and Jobs Act (IIJA) mandates that 49% of supplemental funding be provided as grants or principal forgiveness, permanently eliminating a significant source of recurring funding for future water infrastructure.

Recommendation: End federal mandates for grants or principal forgiveness.

Ending the federal mandate wouldn't end the SRFs' ability to provide grants or principal forgiveness. The Clean Water Act allows up to 30% of annual federal funding to be used as grants or principal forgiveness for communities that meet affordability criteria. Even without the federal mandates, the SRFs would continue to help communities that couldn't otherwise afford to pay for clean water infrastructure. Moreover, many Clean Water SRFs would prefer to use

state grant programs, which have more flexibility and fewer requirements, to help communities with significant affordability challenges.

State Match

The Clean Water Act requires states to match 20% of the annual capitalization grant. When the match requirement was established, 100% of federal funding had to be used for subsidized loans; the law didn't allow federal funding to be used for grants or principal forgiveness.

Some SRFs, like the Oklahoma Clean Water SRF, issue revenue bonds to provide state match. However, federal mandates for grants or principal forgiveness jeopardize the ability of the SRFs to generate state match because only interest payments on subsidized loans can be used to repay the bond. Because federal mandates for grants or principal forgiveness reduce funding for subsidized loans, some SRFs may need to raise interest rates to generate adequate state match.

Recommendation: End state match for federally mandated grants and principal forgiveness.

States should only be required to match federal funding for SRF subsidized loans, not for federally mandated grants or principal forgiveness.

Congressional Earmarks

Over the last two years, Congress has diverted \$1.3 billion or 40% of annual federal funding from the Clean Water SRFs to create a gigantic new EPA grant program for congressional earmarks. The proposed 2024 appropriations bills from the U.S. House of Representatives and U.S. Senate would divert another \$815 million from Clean Water SRF subsidized loans to one-time grants – \$470 million for House earmarks and \$345 million for Senate earmarks.

Additionally, the House appropriations bill would provide less than \$65 million to split among 50 states and Puerto Rico for Clean Water SRF projects, a 96% cut from annual federal funding of \$1.6 billion just three years ago.

Congressional earmarks have also undermined the transformational potential of the IJJA. While the IJJA has provided \$4.1 billion in *supplemental* federal funding for the Clean Water SRFs over the last two years, nearly one-third, or \$1.3 billion, was needed to backfill cuts to annual federal funding caused by using the SRF capitalization grant to pay for congressional earmarks. If this practice continues, the SRFs face a program-ending funding cliff when short-term IJJA funding ends in three years.

Recommendation: Establish a separate authorization for congressional earmarks.

Creating a separate authorization for congressional projects would restore transparency and fiscal integrity to the Clean Water SRFs.

Minor tweaks to the IIJA will improve operations and outcomes.

IIJA Funding for Emerging Contaminants

The IIJA provided \$1 billion over five years to the Clean Water SRFs specifically to remediate the potential harm of emerging contaminants on public health and the environment. However, appropriate restrictions in the base program are limiting the most effective use of this short-term dedicated funding.

- Under current law, routine water quality testing and monitoring is ineligible for SRF funding. While CIFA supports this prohibition for the base program, testing and monitoring are critical activities for developing a comprehensive plan to detect, prevent and mitigate emerging contaminants.
- Under current law, watershed studies, which include water quality testing and monitoring, are eligible for SRF funding. However, EPA limits eligibility to studies in watersheds with *known* contamination; studies to *detect* contamination in a watershed are ineligible.
- Under current law, capital improvement projects for pretreatment at industrial facilities are eligible for SRF funding if discharges are treated beyond pretreatment standards. A utility or government agency must serve as a conduit for the SRF loan, also known as a pass-through loan. However, this option has not been widely used to date.

Recommendation: Expand the eligible uses of funding for emerging contaminants

Explicitly allow SRFs to use IIJA emerging contaminants funding for sampling, testing and monitoring to detect sources of contamination, watershed studies to detect and map the pathways of contamination, and capital improvement projects at industrial facilities to pretreat wastewater to reduce and prevent contamination.

Technical Assistance

As part of the IIJA, the Drinking Water and Wastewater Infrastructure Act amended the Clean Water Act to allow the Clean Water SRFs to use up to 2% of annual federal funding to provide technical assistance to small and rural communities. While similar to a long-term provision in the Safe Drinking Water Act, the Drinking Water SRFs have more flexibility to fund qualified providers,⁶ including private sector professionals, while the Clean Water SRFs can only fund government and not-for-profit providers⁷.

⁶ Safe Drinking Water Act, U.S.C. 42 §300j-12 (g)(2)(C) "An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State."

⁷ Clean Water Act, U.S.C. 33 §1383 (k) "A State may use an additional 2 percent of the funds annually awarded to each State under this subchapter for nonprofit organizations (as defined in section 1254(w) of this title) or State, regional, interstate, or municipal entities to provide technical assistance to rural, small,

CIFA defines technical assistance is the targeted delivery of professional services to help communities comply with water quality standards, build physical, financial and operational resiliency, and develop and implement an economically and technically sound plan for capital improvement projects. Unfortunately, government and non-profit providers have limited capacity to provide needed professional services, such as engineering, environmental assessment, and accounting, to accomplish these goals for small and rural communities.

Recommendation: Expand eligible providers for technical assistance

Align the language in the Clean Water Act to the language in the Drinking Water Act to allow the SRFs to use up to 2% of annual federal funding for technical assistance provided by any qualified provider, including government, not-for-profit organizations or private sector entities.

Thank you for your partnership.

On behalf of the Clean Water SRFs, thank you for your partnership. With your continued support, the Clean Water SRFs will continue to finance water infrastructure projects that improve water quality and provide safe and affordable wastewater services for hundreds of millions of American.

and tribal publicly owned treatment works (within the meaning of section 1254(b)(8)(B) of this title) in the State.”