



OFFICE OF GROUND WATER AND DRINKING WATER

WASHINGTON, D.C. 20460

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MEMORANDUM

SUBJECT: Drinking Water Territorial Set-Aside Construction Grant Program – Changes to Allocation Methodology and Utilization of Unobligated Funds

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Overview

This memorandum provides updates to the Drinking Water Territorial Set-Aside Construction Grant Program’s (hereinafter “the Territorial Program”) methodology for allocating funds amongst Territories and a new framework for redistribution of unobligated funds that is specific to the Territories and consistent with SDWA, Agency policy, and the recommendations of an EPA work group.

In 1998, EPA issued a memo outlining the Territorial Program’s allocations from the Drinking Water State Revolving Fund (DWSRF).¹ Since then, EPA has implemented no substantial changes to the Territorial Program allocation approach. Given this, as well as the large increase in funding provided by the Bipartisan Infrastructure Law (BIL) (P.L. 117-58), also known as the “Infrastructure Investment and Jobs Act of 2021” (IIJA), EPA convened a cross-Agency workgroup to discuss whether changes to the Territorial Program’s allocation approach were needed and, if so, what changes should be made.

SDWA allows EPA to set-aside up to 1.5% of the DWSRF appropriation to the Territories. This memo describes a change in the methodology used to determine the allocation of the statutory 1.5% allotment between Territories. The change is an increase of the minimum allotment that each Territory receives. This memo does not change the Territorial Set-Aside distribution formula for the funds remaining after each Territory receives its minimum allotment amount. This memorandum also establishes a framework for redistributing funds among the Territories in the instance that a Territory declines some or all of its funding.

¹ See *Drinking Water Infrastructure Grants – Territorial Set-Aside Program* memorandum, November 17, 1998.

Background

The Safe Drinking Water Act (SDWA) sets general parameters for EPA to use to allot DWSRF funding to Territories.² Section 1452(j) of SDWA, along with language provided in EPA’s annual appropriation, allows EPA to set-aside up to 1.5% of the Drinking Water State Revolving Fund (DWSRF) appropriation to the Territories, creating Drinking Water Territorial Set-Aside Construction Grant Program.³ The DWSRF provisions of the SDWA define “Territories” as American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.⁴

The 1998 memo established a guaranteed minimum allotment for each of the Territories of “either \$150,000 or 7.5% of the funds available for the program, whichever is greater.” The purpose of the minimum was to ensure that each Territory could fund at least one project each year, while at the same time trying to distribute funds in accordance with the relative needs of the public water systems in each Territory.

The 1998 memo also established a distribution formula for the funds remaining after each Territory receives its minimum allotment amount. Consistent with SDWA 1452(j) and the Public Water System Supervision grant program section, EPA used factors including population; geographical area; the number of community water systems (CWS), non-transient non-community water systems (NTNCWS), transient non-community water systems (TNCWS); and the information collected through the most recent Drinking Water Infrastructure Needs Survey and Assessment (DWINSA). The factors and percentages for the formula are provided in the table below.

Factors and Percentage Weights

Factor	Percentage Weight
Population	5%
Geographical Area	2.5%
Number of CWS + NTNCWS	14%
Number of TNCWS	3.5%
DWINSA Needs	75%

As mentioned, EPA has not updated the Territorial allocation minimum or allotment formula since they were established in 1998. With the passage of BIL in 2021, more than \$90 million is allocated to the four Territories each year for five years. This is more funding each year than the Territories received from the DWSRF in the previous five years combined. Given the large and unprecedented amount of money going to the Territories, EPA determined it was worthwhile to revisit the policies surrounding the Territorial Program.

While the funds for the Territorial Program come from the DWSRF appropriation, SDWA section 1452(j) does not explicitly lay out a redistribution process for the Territories. Until now, EPA had not established a redistribution plan for funds in the instance that a Territory declines or returns unobligated funds. This is unusual for these types of grants. The 50 States, Puerto Rico, and the District of Columbia have a fund reallocation process established in statute⁵ and described in a September 2020 memorandum.⁶ Additionally, Tribal set-aside funds are reallocated separately from the States following a defined procedure. Given an increasing amount of

² SDWA 1452(j) sets the ceiling of 0.33% for all four Territories combined, but since 2010 appropriations laws set by Congress have increased that ceiling to 1.5%.

³ See, e.g., P.L. 117-328, Division G., Title II, State and Tribal Assistance Grants (“That for fiscal year 2023, notwithstanding the limitations on amounts specified in section 1452(j) of the Safe Drinking Water Act, up to 1.5 percent of the funds appropriated for the Drinking Water State Revolving Fund...may be reserved...for grants made under section 1452(j)”).

⁴ Under the DWSRF, Puerto Rico is treated as a State, and the District of Columbia is not a part of the Territorial calculation because it receives a separate grant.

⁵ 42 U.S.C. § 300j-12 (a)(1)(E)

⁶ [State Revolving Fund Capitalization Grant Reallotment Procedure.pdf](#)

unobligated funds and open capitalization grants for the Territories' grants, it is important to have a process in place in the instance that these funds need to be redistributed.

To address these two issues, in August 2023, EPA convened a work group of EPA employees from Region 2, Region 9, and Headquarters that work on the Territorial Program, the SRFs, and the Drinking Water Infrastructure Needs Survey and Assessment (DWINSA). The workgroup met twice in 2023 and discussed whether the Territorial Program needed updates and, if so, what updates were necessary. Regional employees brought forward the concerns and goals of Territories in their region. All updates made in this document reflect work group recommendations.

Territorial Allotment Update

The per-Territory minimum allotment was initially established to allow each Territory to complete one project each year while also balancing the relative needs of the public water systems in each Territory. However, due to inflation and the high cost of construction in the geographically remote Territories, this minimum no longer meets this intent. Effective with the FY24 appropriation, EPA is raising the minimum per-territory allotment to **\$1,000,000 or 15% of the funds available for the Territorial Program, whichever is greater**. This new minimum will more effectively balance the shared financial need held by the Territories. This minimum will be in place, as statutes allow, for each of the DWSRF pots of funding, including BIL funding and any future relevant appropriations. Note that this does not change the overall Territorial Program appropriation ceiling set by statute, which is currently 1.5% of the funds annually available under SDWA section 1452 for grants to States.

Territorial Redistribution Framework

While the funds for the Territorial Program come from the DWSRF appropriation, the Territorial Program is governed by SDWA section 1452(j) and the Uniform Grant Guidance (UGG; 2 CFR 200 and 1500), which do not explicitly lay out a redistribution process for the Territories. EPA provides this plan as a guideline in the instance that redistribution of funds is necessary.

If a Territory declines funding or if funds for a Territory need to be deobligated for any reason, Regional project officers for the Territorial Program will notify EPA Headquarters by the end of the federal fiscal year. EPA will work quickly to redistribute funds. These redistributed funds will be used to provide additional grants to Territories pursuant to SDWA section 1452(j). Funds declined by or deobligated from a Territory cannot be reallocated to the state SRF programs under SDWA section 1452(a)(1)(E). Typically, the funds will be redistributed to those Territories that were awarded their full allocation of funds within the fiscal year that the funds were authorized and the following fiscal year, using the same formula used for that fiscal year appropriation. For example, if the U.S. Virgin Islands declines its allotment from the FY 2023 BIL lead service line replacement appropriation, the FY 2023 BIL lead service line replacement formula will be proportionally adjusted and used to distribute the remaining funds to American Samoa, Guam, and the Northern Mariana Islands if these three entities received their full FY 2023 BIL lead service line replacement allotments.

The project period limitations of the grant are described in the Grants Policy Issuance (GPI) 11-01 and the terms and conditions of the grant. In the instance that grants are consolidated using rights granted under the Omnibus Territories Act, the period of performance will be for all of the grants being consolidated. If a Territory is unable to obligate the funds during the project period, the Territory may request a grant extension. The UGG describes grant extensions further in 2 CFR 200.308. EPA will take into account, among other factors, any accumulation of unliquidated obligations when determining whether to allow a no cost extension to the Territory. EPA encourages the Territories to obligate grant funds in a timely manner and can assist the Territories in implementing best practices for managing unobligated funds.