

Association of State Drinking Water Administrators

**Water Infrastructure Improvements for the Nation (WIIN) Act
Summary of Key Provisions of Interest to State Drinking Water Programs
December 2016**

The WIIN Act includes both the traditional elements of the Water Resources Development Act that funds Corps of Engineer projects, harbor maintenance, and inland waterways as well as, for the first time, new SDWA provisions and funding for lead in drinking water issues. You can download the final bill at <https://congress.gov/bill/114th-congress/senate-bill/612/> and see the drinking water provisions and relevant WIFIA language in Title II, Subtitle A, (pages 219-270) and Title IV (pages 707-711), respectively. The bill, as passed by both House and Senate, was signed by the President on December 19. The information below reflects specific provisions related to drinking water and state requirements for implementation.

SUBTITLE A: Safe Drinking Water

§2101 Sense of Congress that Congress should provide robust funding for the DWSRF.

§2102 Preconstruction activities are now considered as eligible activities under the DWSRF.

§2103 SDWA §1452(g)(2) Set-aside language is revised to remove the overmatch for the 10% set-aside and change the 4% administrative set-aside to be "equal to the sum of any state fees collected and the greatest of \$400,000, 1/5% of the current fund value, and an amount equal to 4% of all grants awarded to the fund under this section for the fiscal year."

§2104 A new section in the SDWA (§1459) addresses assistance for small and disadvantaged communities. The section includes a new grant program for underserved communities and a separate grant program for lead reduction activities:

- **§1459A Assistance for underserved communities** – defined as any community determined by the Administrator to either have no household drinking water or wastewater services or one served by a public water system that violates or exceeds any MCL, treatment technique, or action level. Such a condition qualifies eligible entities (public water system; tribal system, a state [on behalf of an underserved community]), and a community, that under affordability criteria, is determined to be disadvantaged or may become disadvantaged and have a population <10,000) for grant assistance.
- **EPA shall establish a grant program to assist these public water systems** to meet compliance requirements. Projects eligible for assistance include those to return a system to compliance; efforts that benefit disadvantaged communities on a per household basis; and those that provide household water quality testing, including testing for unregulated contaminants. Grants, however, are to be cost shared with the recipient to be responsible for 45% of the total costs (including in-kind contributions), provide any necessary land or rights of way, and 100% of any O&M costs. There are, as well, hardship waivers that EPA can apply.
- **Authorizes \$60M** each fiscal year 2017-21.

§2105 A new section in the SDWA (§1459B) addresses lead reduction activities: CWSs, tribes, and NTNCWS, qualified nonprofits, municipalities, and states, interstate, or intermunicipal agencies can qualify for cost-shared grants dedicated to lead reduction projects – those with the primary purpose of reducing the concentration of lead in water for human consumption. Eligible projects include replacement of publicly owned lead service lines; testing or planning to identify and address conditions (including corrosion control) that contribute to increased lead concentrations in water for human consumption; and assistance to low income homeowners for lead service line replacement.

- **“Lead replacement” does not include** partial lead service line replacement if, at the end, drinking water is delivered through publicly or privately owned portion of a lead service line. “Low income” uses the individual state’s definition of the term.
- **The grant has two preconditions.** Eligible entities must identify the source of the lead and the means by which the proposed lead reduction project would meaningfully reduce the concentration of lead in the water.
- **Priority will be given to disadvantaged communities** that wants to undertake lead reduction because of lead action level exceedances within the past three years or addresses lead levels at a school, daycare, or other facility that serves children or other vulnerable subpopulations.
- **The grant has a 20% non-Federal cost share** but also has cost waiver provisions for low income individual homeowners as determined by EPA. Further, grant amounts for low income homeowners shall not exceed the standard replacement cost.

There are also special considerations for lead service line replacement grants. As part of the grant, the recipient:

- shall notify customers of the replacement of any publicly owned portion of the lead service line;
- may, for non-low income homeowners, offer to replace the privately owned portion at the cost of replacement for that homeowner’s property;
- may, in the case of a low income homeowner, offer to replace the privately owned portion at a cost that is equal to the difference between the replacement cost and the amount of assistance available to that homeowner; and
- shall notify each customer that any planned replacement for publicly owned lines funded by this grant will occur only if the customer agrees to simultaneous replacement of the privately owned portion of the lead service line

Not more than 4% of available grant funds may be used for EPA’s administrative costs.

Authorizes \$60M each fiscal year 2017-21.

§2106 Notice to persons served – revises SDWA §1414(c) to require that **public notice** be distributed by the utility ***not later than 24 hours after a lead action level exceedance***. This includes the existing action level or another health level that may be established by EPA in the future (such as the Health Action Level recommended by NDWAC for the LCR Long Term Revisions). Should that not occur, states have 24 hours to act and if the state fails to act, EPA shall make public notice within 24 hours of learning of the failure. This section also includes:

- **New language stating that if any regulated contaminant is detected in the water provided by a PWS, a new statement in the utility's Consumer Confidence Report must describe the MCL, MCLG, the level of contaminant detected, the action level for the contaminant, and if there has been a violation of the MCL during the past year, and a brief statement regarding the health concerns that resulted in regulation of the contaminant.**
- **Further, EPA, in consultation with PWS owners/operators and states, will establish a strategic plan for how EPA, state primacy agencies, and owners/operators of public water systems shall provide targeted outreach, education, technical assistance, and risk communication to populations affected by lead concentrations.**
- **Should EPA learn, via means, other than a state or PWS, that a household exceeds a lead action level, an Office of Water employee shall forward the data and information on sampling techniques used to collect the data, to the PWS owner/operator and the state where the affected household is located within a timeframe to be specified. The owner/operator then shall disseminate the information to the affected household within a specified time period if they have not already done so. Should the owner/ operator fail to act within the specified time period, EPA shall consult with the Governor within 24 hours to develop a plan to disseminate information to the affected households within 24 hours. If EPA and the Governor disagree on a plan or the information is not disseminated within 24 hours, then EPA shall act.**
- **Information for all such notices shall include:**
 - a clear explanation of the potential adverse health effects when a lead action level is exceeded,
 - steps that the owner/operator is taking to mitigate the concentration, and
 - the necessity of seeking alternative water supplies until the concentration level is mitigated.
- **Amends SDWA §1417 to make information publicly available on lead in drinking water risks, contributing factors within a residence, steps that can be taken to reduce risks, and availability of additional resources that consumers can use to minimize lead exposure.**
- **Should funding be available, EPA shall carry out targeted outreach strategies that focus on populations at risk of adverse health effects from exposure to lead in drinking water.**

§2107 Amends SDWA §1464 to replace subsection (d) with language related to voluntary school and childcare lead testing programs. Establishes a grant program for states to assist local educational agencies in voluntary testing for lead in drinking water. EPA may also provide grants for this testing to local education agencies (including child care facility owners) in states that do not have a state program.

- Not more than 4% of any award may be used for administrative costs.
- Awardees must also ensure that grant funds are expended in accordance with the 3Ts guidance, applicable state regulations or guidance on lead reduction in schools and child care programs, and make a copy of the results of any voluntary testing available to the

public and notify parents, teachers, and employee organizations of the availability of this information.

- If resources are available, the state or local educational agency shall demonstrate that the funds provided will not displace other available resources for lead testing.
- SDWA §1465 on the same subject is repealed.
- **Authorizes \$20M each fiscal year 2017-21.**

§2108 Speaks to establishing a drinking water technology clearinghouse on alternative drinking water delivery systems (including wells), considering wells as an alternate water source for small systems (<500 population) and a report to Congress in 3 years on the use of these alternative delivery systems.

§2109 Innovations in Drinking Water adds technologies to identify and mitigate sources of drinking water contamination, including lead contamination, to existing language on technical assistance.

- Amends SDWA §1442 to include the availability of technical assistance for innovative technologies to small public water systems.
- Requires a report to Congress every five years on the amount of funding used to provide small system technical assistance, barriers to greater use of innovative technologies, and cost-saving potential from such technologies.
- Authorizes \$10M for technical assistance to small systems each fiscal year 2017-21.

§2110 Extends small system technical assistance authorization in SDWA §1452(q) (2% technical assistance set aside) through 2021.

§2111 & §2112 Defines Indian Tribe and speaks to technical assistance for Tribes, intertribal consortia, and tribal organizations.

§2113 American Iron & Steel (AIS) – Provisions apply to all DWSRF loans but **only during FY 17.**

SUBTITLE B: Drinking Water Disaster Relief and Infrastructure Investments

§2201 Drinking Water Infrastructure – for this section...

- Defines 'eligible state' as one with a declared Stafford Act emergency related to public health threats from the presence of lead or other contaminants in water provided by a PWS.
- Defines 'eligible system' as a PWS that has been the subject of an emergency declaration.
- Defines 'lead service line' as a pipe and its fittings which are not lead free, that connect the drinking water main to the building inlet.
- Defines public water system using the definition in SDWA §101(4).
- Allows states to use §1452(d) provisions for disadvantaged communities to address lead or other contaminants, including repair and replacement of lead service lines and public water system infrastructure.
- 30% upper limit of funds reserved for DWSRF disadvantaged community loans shall not apply to funds made available in this section or to matching requirements.

- **Authorizes \$100M in additional capitalization grants to be available for 18 months to support this effort related to lead as well as other contaminants in drinking water.**
- EPA must respond within 30 days of receipt of a state's supplemental IUP.
- The state's supplemental IUP should include preapplication information on projects that contain a description of the project; an explanation of how the project will address the declared emergency; estimated project cost; and project construction start date.
- After 18 months, any unobligated funds shall be made available to states as additional capitalization grants for the DWSRF.
- Upon request from a state or local health official, ATSDR shall, in coordination with other agencies, conduct voluntary surveillance to evaluate any adverse health effects on individuals exposed to lead from drinking water in affected communities and provide consultation regarding health issues in the community.

§2202 WIFIA (per the sense of Congress) will receive \$20M in an initial appropriation and be used for projects, including those that address lead and other contaminants in drinking water systems.

§2203 \$17.5M is authorized to create a lead exposure registry as part of either the ATSDR or CDC and \$2.5M is authorized to stand up a 15 member advisory committee under the Secretary of Health and Human Services in collaboration with CDC and other relevant agencies to review Federal programs and services available to affected entities that have been exposed to lead; review current research and best practices; and conduct other reviews as needed. Annually for 5 years the committee shall report to Congress on the effectiveness of federal programs for services to those exposed to lead, research needs and recommendations for improved access to services.

§2204 Authorizes \$15M for fiscal years 2017-18 to carry out Public Health Service grants for preventive health service programs and \$15M for fiscal years 2017-18 for the Public Health Service Healthy Start Program.

TITLE IV – OTHER MATTERS

§5008 Amends the 2014 WIFIA to:

- Add chloride control as eligible under a desalination project
- Add alternative water supplies to reduce aquifer depletion as part of a water recycling project
- Add projects to prevent, reduce, or mitigate the effects of drought, including those to enhance resilience in drought stricken watersheds
- Allow application fees to be financed as part of the loan.
- Apply any eligible project costs incurred and the value of any integral in-kind contributions made before receipt of assistance shall be credited toward the 51% nonfederal cost share.
- ***Sense of Congress that any funds appropriated for this Act should be in addition to robust funding for the state water pollution control revolving funds and state drinking water treatment revolving loans and that funds for these loans should not decrease in any fiscal year.***

