

Frequently Asked Questions on the Infrastructure Investment and Jobs Act 2022 (IIJA)

The Infrastructure Investment and Jobs Act 2022 (IIJA) has garnered much attention among those interested in water infrastructure and has generated considerable press coverage. This interest and coverage has generated many questions about the funds' use and application. This FAQ is intended to answer some of the questions but is limited to the IIJA funds flowing through the EPA to the state's existing State Revolving Funds (SRFs) for water and wastewater infrastructure.

1. How much money is Texas receiving through the IIJA for water?
 - a. Over the next five years, the state expects to receive approximately \$2.5 billion through the IIJA to improve water and wastewater infrastructure. IIJA funds will be in the form of additional capitalization grants to the states. This mirrors the existing practice of capitalization grants to states for funding the SRFs.
 - b. The TWDB anticipates \$507,971,000 from appropriations for federal fiscal year 2022. The [implementation memo](#) from the EPA dated March 2022 states that allotment tables for fiscal years 2023–2026 will be issued during those years.
 - c. This year, the TWDB has already begun putting \$222 million from the IIJA to work as part of making \$750 million available for financing regular water and wastewater projects. Another \$285 million in specialized funding from the IIJA is available for any identified projects addressing EPA-designated emerging contaminants or lead drinking water service lines.
2. Has Texas drawn down the funds?
 - a. On October 5, 2022, the TWDB approved the Clean and Drinking Water State Revolving Funds' 2023 Intended Use Plans (IUPs) covering "general activities," which combines the standard capitalization grants as appropriated in the 2022 congressional budget with the IIJA grants. In December 2022, the TWDB received grant agreements from the EPA covering the general activities.
3. When does the TWDB anticipate awarding the funding?
 - a. The TWDB anticipates beginning to make funding commitments for projects in spring 2023.
4. What are the various uses for the IIJA funds?
 - a. In addition to standard SRF projects, there are multiple new categories of funds available to the states under the IIJA.
 - i. In the Clean Water SRF (CWSRF)
 1. Standard projects eligible under the Clean Water Act (general activities)
 2. Emerging contaminants
 - ii. In the Drinking Water SRF (DWSRF)
 1. Standard projects eligible under the Safe Drinking Water Act (general activities)
 2. Emerging contaminants
 3. Lead service line replacement
 4. Standard set-asides for non-construction (administration, state program management, small system technical assistance, and local assistance and other state programs)

5. Will the state be able to spend all the IJA funds?
 - a. It depends on the category of funds and the need.
 - b. Standard project (general activities) funds: We do not anticipate any issues related to spending IJA funds for this category. The draft 2023 IUPs for the CWSRF and DWSRF have more than \$2 billion in projects requesting financial assistance per program. The proposed projects that make up the IUP were submitted for scoring in March 2022.
 - c. Set-asides for non-construction: We do not anticipate any issues related to spending IJA funds the IUPs allocate for this category. In addition, if there is not sufficient need for the total set-aside amounts, those funds can be used for other project categories that are over-subscribed.
 - d. Emerging contaminants: We do not yet know the need for funds in this category. We have not received sufficient guidance from the EPA as to what constitutes emerging contaminants. While the focus has been on PFAS and PFOS, there is not a standard of treatment level yet established for those contaminants, so utilities may have difficulty designing a project to address such contaminants. The need and demand are still being assessed at the national and state levels.
 - e. Lead service line replacements: We do not yet know the need for funds in this category. While several states, primarily in the northeast and midwest, have long histories with lead service lines, the number and location of lead service lines in Texas are generally unknown except for a few instances where utilities have completed lead service line assessments. Each utility in Texas is required to submit a material survey and lead service line inventory to the TCEQ by October 2024. Without an inventory, it is difficult to determine the demand in Texas and the ability to deliver the funds allocated for lead service lines.
6. Are there funds available to utilities to complete the TCEQ lead service line survey and inventory?
 - a. Utilities could request loan funds to conduct their inventory. The TWDB can do a separate solicitation for lead service line replacements in the future, separate from the existing 2023 IUP. This will be determined by the estimated or perceived demand for the funds in 2023. Some communities could qualify for loan forgiveness for their inventory. However, for every dollar that is disbursed as forgiveness, there must be a corresponding dollar (approximately) that goes out in the form of a low-interest loan.
 - b. Can the state set-aside funds be used to assist utilities with the lead service line inventory?
 - i. The set-asides for technical assistance can be used to help utilities do the inventory. However, the state cannot access set-asides without actual projects for lead service line replacements that would use the program funds. Set-asides are up to 31 percent of the capitalization grant. There are minimal projects related to lead service lines on the draft 2023 IUP, so the State is not able to draw those set-asides at this time.
7. Will the TWDB be able to provide the matching funds?
 - a. The State has sufficient match funds available for the upcoming 2023 IUPs. Those matching funds were obtained by selling bonds for the required match. The match requirement for the first two years is 10 percent, and then it will increase to 20

- percent. Lead service line replacement and emerging contaminants do not require state match.
- b. What are other options for providing match, other than debt issuance?
 - i. The TWDB can ask for appropriations for the match requirements. Should funds not be available, the only other options are to not draw the full amount of authorized capitalization grants and/or reduce the capacity of the funds available for projects.
8. Is there any required legislative action needed to utilize the IJA funds?
 - a. Other than appropriations for match, there have not been any legislative actions identified.
 9. How does Texas define a disadvantaged community that is used to allocate a portion of the grants as principal forgiveness?
 - a. Per federal regulations, states are responsible for defining disadvantaged community and affordability criteria. Across the 50 states that administer the SRFs, there is not a standard for these definitions. As contemplated in the federal regulations, each state has unique needs and demographics. Texas uses its various definitions of disadvantaged and affordability to allocate principal forgiveness. The category with the greatest allocation of principal forgiveness in both SRF programs is called Disadvantaged Community funding. This category uses income levels, unemployment rates, and population trends to determine eligibility. Typically, the project service area must have an income level at or below 75 percent of the state income level and have higher total proposed water and service costs per household to be eligible.
 10. How will the TWDB conduct outreach to entities that may not know they are eligible for IJA funding?
 - a. The TWDB website has information and resources to assist entities in determining their eligibility for funding, including whether they qualify as disadvantaged. Additionally, the agency hosts financial assistance workshops at least monthly across the state to inform potential utilities about the programs and the qualifications for various funding programs.
 11. Who is eligible for funding?
 - a. Clean Water SRF includes
 - i. Political subdivisions, including water supply corporations that are designated management agencies
 - ii. Authorized Indian tribal organizations
 - iii. Private entities (for nonpoint source or estuary projects only)
 - b. Drinking Water SRF includes
 - i. Community Public Water Systems, both publicly and privately owned
 - ii. Nonprofit water supply corporations
 - iii. Nonprofit, non-community public water systems
 12. Who utilizes the set-asides for technical assistance?
 - a. Both the TWDB and TCEQ use set-asides to provide technical assistance to potential applicants, including special assistance for small and rural systems.
 13. What are some of the biggest hurdles to administering the IJA funds?
 - a. Lack of EPA guidance for new, special funding categories
 - b. Additional requirements such as Build America, Buy America (BABA)

Updated 12/29/22

- i. The EPA has started issuing waivers under BABA. There is an adjustment period waiver for eligible projects that have initiated project design planning prior to May 14, 2022. Approved waivers can be found on the EPA's website, www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers.
- c. Unknown demand or need for emerging contaminants and lead service line replacements
- d. A large, fixed percentage of the additional amounts that must go out as principal forgiveness,
- e. Large increase in the amount of match requirements
- f. Misinformation and expectations of the amount of new loan funding that will be available as a result of these funds when, in reality, the law requires a large percentage be provided as principal forgiveness (similar to a grant).