



## **STATE OF RHODE ISLAND**

### **STATE FISCAL YEAR (SFY) 2024 INTENDED USE PLAN**

*in support of the*

### **FEDERAL FISCAL YEAR (FFY) 2023 BASE, GENERAL SUPPLEMENTAL AND EMERGING CONTAMINANTS CAPITALIZATION GRANTS**

*To be made available by the Federal Clean Water Act  
for the Clean Water State Revolving Fund*

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## I. INTRODUCTION

Title VI of the federal Clean Water Act (CWA) established the Clean Water State Revolving Fund (CWSRF) in 1987, as an innovative replacement for the Federal Construction Grants Program. On the federal level, it is managed by the US Environmental Protection Agency (EPA). The Rhode Island CWSRF provides below market financial assistance to traditional municipal wastewater treatment and collection system infrastructure projects. It also may fund a wide variety of other eligible capital water quality and aquatic habitat improvement projects, including, but not limited to, those that address stormwater runoff and nonpoint sources of pollution, watershed protection and restoration of riparian buffers.

On June 10, 2014, the Water Resources Reform and Development Act of 2014 (WRRDA) was signed into law. Among its provisions are amendments to Title I, II, V, and VI of the Federal Water Pollution Act of 1948. The WRRDA provisions created new requirements and eligibilities for the CWSRF.

The federal Bipartisan Infrastructure Law (BIL) was signed on November 15, 2021, which provides significant investment for water and wastewater infrastructure improvements. The BIL is expected to provide additional General Supplemental and Emerging Contaminants funding to the Base CWSRF program allocations for a five (5) year period, ending in FY2026. This IUP reflects the second year of BIL funding.

The RI CWSRF is jointly administered by Rhode Island Infrastructure Bank (Bank) and Rhode Island Department of Environmental Management (RIDEM). The Bank manages the financial aspect of the program while the RIDEM prioritizes eligible projects and manages the technical and certain programmatic aspects of the program.

Consistent with EPA requirements, Rhode Island develops an annual Intended Use Plan (IUP) identifying the intended uses of the funds to support the goals of the program. The IUP also details how the programmatic requirements will be met by the state. Prior to development of the IUP, RIDEM solicits projects for inclusion on the Project Priority List. The annual Project Priority List (PPL) and IUP are developed collaboratively by the Rhode Island Infrastructure Bank (Bank) and the Rhode Island Environmental Management (RIDEM) and are subject to public comment and review before being submitted to the EPA.

The Bank and RIDEM have developed this Intended Use Plan to describe how the state is intending on using the CWSRF funds for State Fiscal Year (SFY) 2024 (July 1, 2023 through June 30, 2024) provided by federal funds allocated to Rhode Island through the Base and BIL appropriations for Federal Fiscal Year (FFY) 2023. In addition to the FFY2023 Base Capitalization Grant allotment of \$5,037,000, the Bank is applying for \$13,996,000 for the CWSRF General Supplemental Grant made available through the BIL. RIDEM and RIIB are deferring application for the \$1,428,000 for the Emerging Contaminants Supplemental Grant until a later date. As required by the CWA, the Bank agrees to provide, through

available resources, the required 20% State Matching Funds in the amount of \$1,007,400 for the Base Capitalization Grant and the required 10% State Matching Funds for the General Supplemental Grant in the amount of \$1,399,600. The required FFY2023 state match for both the Base and BIL capitalization grants have been received from the 2023 State Supplemental Budget and have been deposited into CWSRF program on May 8, 2023.

## **THE RHODE ISLAND CWSRF PROGRAM**

### **A. Administration**

The entities involved in the application for these Federal Capitalization Grants are the Rhode Island Infrastructure Bank (the Bank) and the Rhode Island Department of Environmental Management (RIDEM).

The Bank is the designated lead entity of the CWSRF Program (the Program) and, among other things, is empowered to enter into capitalization grant agreements with the EPA, to accept capitalization grant awards, and to otherwise manage the CWSRF in accordance with the requirements and objectives of the Act.

RIDEM is responsible for establishing assistance priorities and developing the PPL; assisting in the development of the IUP; determining project eligibilities; and performing project technical reviews, NEPA-like State Environmental Reviews, construction inspections, review of project disbursements, federal reporting, and project closeouts.

Consistent with the provisions of the CWA and subsequent amendments to it, the Bank reserves the right to cross-collateralize between the CWSRF and Drinking Water SRF (DWSRF). Similarly, the Bank reserves the right to transfer CWSRF funds to the DWSRF as permitted by CWA. While no transfer is anticipated at this time, the Bank may propose to make such a transfer in the near term if the need arises.

With the award of the FFY2023 Federal Capitalization Grants, including the BIL supplemental grant, it is the State's intention to continue a subsidized loan program for assisting water pollution abatement projects and to continue the proper administration of the CWSRF.

### **B. Planned Program Activities**

RIIB and RIDEM will aim to provide financial assistance to eligible local governmental units, persons, corporations, and sewer authorities for a variety of clean water infrastructure projects.

This IUP outlines the anticipated use of all the funding available in the Program and the various financing methods for making loans.

The strong financial standing of the Program is the result of extensive modeling and analyses that provides the Program with the flexibility to achieve short- and long-term goals within the changing financial, legal, and/or economic environment.

## **II. SHORT-TERM AND LONG-TERM GOALS**

As required by the CWA, the Program has identified the following goals for the CWSRF. The goals described below are grouped according to short-term and long-term objectives and are not listed in any order:

### **A. Short-term Goals**

**Goal #1:** Effectively manage the Program and maintain timely distribution of Program funds.

**Goal #2:** Continue to encourage new project eligibilities and for traditional wastewater projects to include green, clean energy and resilient components.

**Goal #3:** Administer rules, regulations, loan policies and procedures, and continue to manage guidelines that are conducive to the proper functioning of the Program while ensuring compliance with the CWA.

**Goal #4:** Develop a comprehensive need based IUP, to be submitted along with the annual capitalization grant application and prepare an annual report which lists the State's accomplishments for the fiscal year and submit to the EPA in a timely manner.

**Goal #5:** Oversee BABA and BIL implementation requirements across SRF projects, as applicable, and provide detailed info on BABA and BIL compliance requirements, flexibilities and processes to borrowers.

**Goal #6:** Streamline the Project Priority List development process by considering a rule amendment to allow projects to remain on the list for two years, and by incorporating criteria to bolster projects that benefit disadvantaged communities and climate resiliency of clean water infrastructure.

### **B. Long-term Goals**

**Goal #1:** Protect the public health and the environment and promote completion of cost-effective projects.

**Goal #2:** Assure full compliance with Title VI of the Clean Water Act and all federal crosscutting requirements as per the 1987 CWA amendments.

**Goal #3:** Continue to manage the Program such that it will operate in perpetuity.

**Goal #4:** Place emphasis on projects focused on attaining compliance with Rhode Island Pollutant Discharge Elimination System (RIPDES) permit limitations and reinforce the importance of attaining water quality standards in waters negatively impacted by point-source discharges and/or sources of nonpoint source pollution.

**Goal #5:** Continue to evaluate environmental needs throughout the State, by rating specific projects for water quality improvement and/or protection and strive to distribute Program funds in a priority manner.

**Goal #6:** Continue to assist prospective borrowers during all phases of project development, including the financing process.

**Goal #7:** Continue efforts to improve the water quality of the Narragansett Bay and its tributaries, which is designated as an Estuary of National Significance, and in the Wood-Pawcatuck Watershed portions of which are nationally designated as Wild and Scenic Rivers.

**Goal #8:** Coordinate with related partners on the support of borrowers for stormwater, non-point source, climate resiliency and other weather-related projects.

**Goal #9:** Provide financial assistance in the form of loans or other acceptable arrangements with principal forgiveness to mitigate contamination due to emerging contaminants.

**Goal #10:** Support BABA by ensuring that all products used in infrastructure projects as identified in the Act be produced in the US and assurance that required procurement language is used in contracts.

**Goal #11:** Fully enforce Civil Rights by promoting public engagement and program transparency.

**Goal #12:** Identify and prioritize additional subsidy for projects in the IUP that serve disadvantaged communities.

### **C. Information on the CWSRF Activities to be Supported**

**CWSRF Program:** The FFY2023 Capitalization and General Supplemental Grant funds will provide financial assistance to municipalities, sewer authorities, and other eligible entities using direct loans, Bank Loans, or Federal Direct Loans for eligible CWSRF projects addressing wastewater system and stormwater management needs including green infrastructure. The maximum permissible principal repayment period shall be up to 30 years following project completion and may begin up to 12 months after construction is

completed but no later than 5 years from the beginning of construction.

The Program has Federal Direct Loan re-payments, and State Match direct loan repayments available to lend. These amounts will be used to fund “direct loans” (i.e., not leveraged) or for revenue bond pool issues during this IUP period as loan demand and timing dictates.

**Wastewater Treatment Facility Resiliency Grant Program:** RIDEM and the Bank has a funding mechanism that provides grants/loans to municipal and quasi-state entities for the protection of wastewater collection and treatment infrastructure from natural hazards (floods, sea-level rise, etc.) related to climate change. The Wastewater Treatment Facility Resilience Fund (WWTFRF) has been funded with approximately \$5 million in grant funds from a state bond referendum. Projects costing less than \$500,000 would receive a 50% matching grant up to \$250,000. The grantee is free to use any source, including a loan from the Bank, to finance its match. For projects estimated to cost over \$500,000 a 50% matching grant is made up to \$1.25 million and the grantee must finance its match through the CWSRF program.

In FY2022, the Bank financed one CW SRF loan serving as WWTFRF grant match: Quonset Development Corporation for \$450,000. The Bank expects to finance two CW SRF loans serving as WWTFRF grant match in FY2023: Town of Narragansett for \$625,000 and Town of East Greenwich for \$441,305, although these loans have not yet closed.

**Community Septic System Loan Program:** The Bank, in cooperation with RIDEM and Rhode Island Housing (RI Housing), continues to manage its Community Septic System Loan Program (CSSLP) utilizing recycled funds. Rhode Island Housing is the homeowner loan administrator on behalf of the community. The CSSLP allows communities without wastewater treatment facilities to access CWSRF funds. Communities can access the CSSLP after completing an On-Site Wastewater Management Plan (OWMP) approved by RIDEM.

Once the plan appears on RIDEM’s PPL and the Certificate of Approval (CA) is obtained, the community will apply for a loan from the Bank to repair or replace failing sub-standard septic systems. Once the loan is negotiated, the community may then allow residents to access the funds. The borrowing cost for the homeowner is 1% per annum of the outstanding loan balance and a \$300 loan origination fee for a term up to ten years. The Bank uses revolved funds to capitalize the CSSLP. Both RIDEM and the Bank view the CSSLP as a means of achieving the goals and objectives of the approved Section 319 Non-Point Source Management Plan.

In SFY2023, the Bank made one CSSLP loan. As of April 30, 2023, the Bank has made sixty-four CSSLP loans to eighteen communities in the total amount of \$22,700,000 and has originated 1,056 end loans to property owners.



#### **D. RIDEM Administrative Costs**

Based upon the FFY2023 allotment of funds, RIDEM plans to use \$201,480 (4%) of the Base Capitalization Grant for administrative support of the base program, as provided by the CWA Title VI. RIDEM also plans to use \$559,840 (4%) of the BIL General Supplemental grant. The funds will support expanded staffing capacity through either direct RIDEM hires or contractual employees. Additional staffing is needed given the expanded level of program activity and the new requirements associated with BIL funding. New cost codes have been assigned for keeping track of administrative expenses associated with BIL funding.

The Bank, from FFY1998 through FFY2005 had “banked” the authority to use the 4% of the Base federal capitalization funds for RIDEM administrative costs to support the Program. The Bank also banked the FFY2009 American Recovery and Reinvestment Act Capitalization Grant’s 4% administrative monies. To date, \$3,849,156 in Capitalization Funds for RIDEM’s administrative costs have been banked. These funds have been loaned to various communities. As of April 30, 2023, the Bank has “unbanked” \$2,391,856, utilizing its deallocated funds to pay for RIDEM administrative costs, leaving a balance of \$1,457,300 of banked Base RIDEM administrative funds (see Table 1 in Attachment B).

#### **E. Technical Assistance**

Through BIL, the State is allowed to use up to an amount equal to 2% of each of the annual CWSRF Base program (\$100,740), CWSRF General Supplemental fund (\$279,920), and the Emerging Contaminants fund (\$28,560) for the purpose of hiring staff, nonprofit organizations, or regional, interstate, or municipal entities to provide Technical Assistance (TA) to rural, small, and tribal publicly owned treatment works. A majority of the state is serviced by wastewater systems that do not qualify for technical assistance under the BIL provision. As provided for in the BIL, if the State does not utilize the full amount of the technical assistance funds allowed, it may reserve the right to utilize the unused portion(s) at a later date.

For FFY2023 Base, Supplemental and Emerging Contaminants grants, RI hereby exercises this right to reserve all TA funds. During the remainder of FY2023, RIDEM will be conferring with the limited number of eligible wastewater systems on how to best meet their technical assistance needs.

#### **F. Emerging Contaminants**

For FFY2023, under BIL, Rhode Island has been allocated \$1,428,000 in funding to address Emerging Contaminants. The BIL provision states that the requirement to provide state match will be waived.

For SFY2023 (FFY 2022 IUP), the Narragansett Bay Commission, in collaboration with RIDEM, worked to develop a proposal that would support to carry out a planning and

assessment project focused on PFAS compounds as a priority emerging contaminant issue in Rhode Island associated with both point and non-point sources of pollution. The scope of that project is being refined and will result in an update to the FFY22 IUP.

For SFY24, Rhode Island is electing to defer applying for Emerging Contaminant funding under BIL to a later date. This allows for additional time for development of eligible projects during a period of evolving policy and rulemaking concerning PFAS compounds. The intended use of FFY23 BIL Emerging Contaminant funding will be reflected in a future IUP update.

**G. Projects To Be Funded with FFY 2023 State Revolving Funds**

With the total FFY2023 Federal and State allotment, it is the State’s plan to continue a subsidized CWSRF loan program. To determine which projects are to be funded by the Program, RIDEM prepared the SFY 2024 PPL, which was then reviewed in relation to requests received by the Bank through March 31, 2023. The following potential borrowers have submitted applications for Base and Supplemental funding in SFY 2024:

<b>Borrower</b>	<b>Amount</b>
Narragansett Bay Commission	\$50,000,000
City of Central Falls	\$250,000
Rocky Hill Country Day School	\$300,000
<b>Total</b>	<b>\$50,550,000</b>

Note: All borrowers are subject to change.

**III. FINANCIAL PLAN AND STRUCTURE FOR THE CWSRF**

**A. Source of State Match**

The required state match for the Base Capitalization Grant of \$5,037,000 is 20%, which totals \$1,007,400. The Bank is also expecting to receive a CWSRF Supplemental Grant, which has a state match requirement of 10% totaling \$1,399,600. The required FFY2023 state match for both the Base and BIL capitalization grants have been received from the 2023 State Supplemental Budget and have been deposited into CWSRF program on May 8, 2023.

**B. Sources and Uses of Funds Potential**

The estimated funds available for projects in this IUP are summarized in Attachment C. The estimate includes awarded, but unused (undedicated) EPA and State Capitalization Grants still available; available state match; direct loan repayments; deallocated reserve funds; estimated debt proceeds; and interest earnings on investments of Program resources. The total amount of loans to be issued from the CWSRF in SFY2024 is anticipated to be

approximately \$50,550,000. The sources, as listed in Attachment D, include the following: FFY23 Base Supplemental and State Match funds; FFY22 Base, Supplemental, Emerging Contaminants and State Match funds; principal and interest repayments and bond proceeds. The total sources equal \$205,278,768. The uses, as listed in Attachment D, include the following: Anticipated loan commitments for SFY23 and SFY24, totaling \$183,319,314. While the Bank's sources currently exceed our uses, the Bank is proactively reaching out to the entities on the PPL to inquire as to when they will be ready to move forward with funding. It is the Bank's intention to utilize all grant funds.

The resources available in the CWSRF are anticipated to be enough to finance all eligible projects ready for financing during this IUP period. The Bank will fund projects according to the PPL developed by RIDEM and readiness to proceed. Projects on the draft 2024 PPL total \$2,254,543,081 and the total amount of projects that can be funded this year totals \$205,278,768; therefore, the Bank estimates its funding gap to be \$2,049,264,313.

The Bank anticipates closing on three loans (\$50,550,000) in SFY2024. The list of anticipated loan commitments can be found in Attachment C, Table 2.

### **C. Loan Terms and Fees**

The CWSRF program offers an economic benefit to its borrowers in the form of loan interest subsidization. The standard interest rate is 1/3 off the individual borrower's market rate (as jointly determined by the Bank's financial advisor and the borrower's financial advisor). Loans can be up to twenty years in duration and can be structured to meet the repayment abilities unique to each borrower. Loan fees include a 1.0% loan origination fee and a 0.3% annual service fee on the outstanding balance of the loan. Interest is collected twice annually, and principal is collected once annually. The Bank uses fees collected to pay for administration costs and other operating expenses.

The Bank charges a 1.0% Loan Origination Fee on all loans. These fees help offset origination-related expenses. The Bank also charges a 0.30% service fee (per annum) on outstanding loan balances; this fee is used to pay the Bank's operating expenses.

Based on anticipated loan commitments of \$50,550,000 million, the Bank anticipates the program income to be approximately \$500,000.

### **D. Investment Practices**

Loan demand can be met using direct loans or leveraged loans. Substantial demand for clean water funds exceeds capitalization grants and state match amounts. The Bank issued revenue bonds, leveraging the Clean Water and Drinking Water program, totaling \$77,000,000 on June 13, 2023. Revenue Bonds are sized based on the amount of identified need, and a portion of the proceeds may include funds for the purpose of providing the state matching funds. The Revenue Bonds may be issued in a single series,

or multiple, smaller series as funds are required for eligible project costs. The series of Revenue Bonds will be issued as needed. The current Clean Water and Drinking Water leverage ratio is approximately 2x.

As dictated by EPA, the State agrees to: 1) maintain records which account for fees separate from the CWSRF project fund, 2) identify in the IUP all types of fees charged on loans, including the fee rate, and the amount of fees available, and 3) include in the annual report the types of fees charged on loans, the amount of fees collected, and how those amounts were used.

#### **E. Schedule of Anticipated Payments into the ASAP system**

The Program anticipates deposits into the ASAP for the FFY2023 base capitalization grant as per the schedule in Attachment F. The Bank certifies that it will enter into binding commitments for 120% of each quarterly payment received under the base capitalization grant within one year of receipt of that payment. At this time, the Bank is unable to forecast an estimate as to when specific loan agreements will be signed. Loans are closed based on projects being ready to proceed. It is also expected that the Bank will draw cash from ASAP as per the same schedule.

#### **F. Federal Cash Draw Proportionality Ratio**

On November 18, 2022, the Office of Grants and Debarment (OGD) approved a permanent regulatory exception to the State Revolving Fund cash draw rules. This exception eliminates the requirement for the states to draw SRF disbursement request at a proportional federal to state ratio. It also eliminates the cap on federal funds that can be drawn for refinance projects in the first eight quarters after EPA awards a capitalization grant to the state.

In February 2023, EPA amended the BIL grants to reflect the updated terms and conditions.

#### **G. Transfer Authority between Clean Water and Drinking Water SRF's**

In accordance with the Safe Drinking Water Act (SDWA) and the SRF funds transfer provisions (Section 302), the State hereby reserves the authority to transfer an amount up to 33 percent of the DWSRF program capitalization grant(s) to the CWSRF program, or an equivalent amount from the CWSRF program to the DWSRF program. In addition, the Bank may transfer funds between CWSRF and DWSRF General Supplemental grants, and between the CWSRF and DWSRF BIL Emerging Contaminants capitalization grant. No transfer of funds is planned at this time; however, the Bank reserves the right to transfer funds in the future.

## **H. Cross-Collateralization of the CWSRF and DWSRF Revenue Bond Structure**

The Master Trust Agreement dated May 1, 2021, provide for a bond structure that allows for cross-collateralization of the CWSRF and the DWSRF to provide additional bond security and ratings enhancement for both programs. With cross-collateralization, excess CWSRF revenues (revenues pledged to repayment of CWSRF bonds over and above what is needed to make actual debt service payments) would be available to cure any DWSRF bond payment default or reserve fund deficiency. Likewise, excess DWSRF revenues would be available to cure any CWSRF bond payment default or reserve fund deficiency. Pursuant to federal regulations, cross-collateralization support cannot extend to debt specifically issued for the purpose of providing state matching funds. The Master Trust Documents provide adequate safeguards to ensure that future CWSRF or DWSRF bond issues will comply with this limitation. Revenues pledged to the repayment of CWSRF bonds include: principal and interest payments received on loans and investment earnings on funds and accounts within the bond indenture, including a reserve fund comprised of CWSRF program assets (cash). The Master Trust Documents and each series bond indenture require that revenues be pledged sufficient to cover the debt service requirement for each payment date at least 1.1 times. Accordingly, a cash flow surplus is anticipated for each period absent a borrower default on a loan. This surplus flows to the other series of the CWSRF and DWSRF bonds. Under the new Master Trust Indenture, all CWSRF loans are pledged to all CWSRF outstanding bonds, and all DWSRF loans are pledged to all DWSRF outstanding bonds:

- The order of priority for surplus CWSRF pledged revenues is: CWSRF bond issue debt service payment deficiencies;
- Any DWSRF bond issue debt service payment deficiencies (but not DWSRF state match bonds);
- CWSRF bond issue reserve fund deficiencies;
- Any DWSRF bond issue reserve fund deficiencies (but not DWSRF unrestricted reserve funds that secure DWSRF state match bonds);
- To replenish and repay the DWSRF for any surplus DWSRF pledged revenues that were previously utilized to cure a CWSRF bond issue debt service or reserve fund deficiency;
- All remaining funds are released back to the CWSRF Loan Account.

The order of priority for surplus DWSRF pledged revenues is similarly structured, as such any surplus CWSRF pledged revenues that are utilized to cure a DWSRF bond issue debt service or reserve fund deficiency will ultimately be repaid to the CWSRF through operation of the Master Trust Documents.

## **I. Projected Funding List**

With the awards of the FFY2023 Base Capitalization Grant, the General Supplemental Grant, and including the requisite State Match amounts, totaling \$21,440,000; the Bank expects to fund all, or portions of the projects identified in Attachment C. The Bank has

received applications from three entities as shown below:

<b>Borrower</b>	<b>Amount</b>
Narragansett Bay Commission	\$50,000,000
City of Central Falls	\$250,000
Rocky Hill Country Day School	\$300,000
<b>Total</b>	<b>\$50,550,000</b>

#### **IV. ADDITIONAL SUBSIDIZATION**

Certain laws governing the CWSRF program have instituted various amounts of additional subsidization provisions. The origin of current additional subsidization provisions and their amounts are as follows:

1.) WRRDA of 2014

Section 603 (i) instituted a permanent authority for states to provide a certain percentage of its total capitalization grant award as additional subsidization under certain conditions, depending on the total federal appropriation amounts:

- total appropriation less than or equal to \$1 billion: no additional subsidy authorized;
- total appropriation greater than or equal to \$1.3 billion: additional subsidy up to 30 percent of the capitalization grant authorized;
- total appropriation greater than \$1 billion, but less than \$1.3 billion: a percentage equal to the percentage by which the appropriation exceeds \$1 billion authorized. For example, if the total annual appropriation is \$1.1 billion, the total amount of additional subsidization available for all States would be \$110 million, with each CWSRF able to provide up to 10 percent of its total capitalization grant as additional subsidization.

Additional subsidization may only be applied to eligible recipients for the following:

- to benefit a municipality that meets the State’s affordability criteria as established under the FWPCA section 603(i)(2);
- to benefit a municipality that does not meet the State’s affordability criteria but seeks additional subsidization to benefit individual ratepayers in the residential user rate class; or
- to implement a process, material, technique, or technology that addresses water or energy efficiency goals; mitigates stormwater runoff; or encourages sustainable project planning, design, and construction. (Note: These types of projects also satisfy the Green Project Reserve dedicated for projects for water/energy efficiency, green infrastructure, or environmentally innovative projects.)

The total federal CWSRF appropriation for FFY 2023 is \$1,638,861,000, therefore states are allowed to implement additional subsidization from 0% up to 30%.

## 2.) Appropriations Acts

The Consolidated Appropriations Act of 2023 requires that 10% of the Base Capitalization Grant be provided as additional subsidization for those same eligibilities noted above.

## 3.) BIL

BIL not only provides supplemental capitalization grants, but also made certain provisions onto the base capitalization grant. BIL requires that a minimum of 10%, but no more than 30% of the Base capitalization grant be provided to the eligibilities noted above. BIL also requires that 49% of the General Supplement grant and 100% of the EC grant be provided as additional subsidization.

The additional subsidization provisions from each authorizing source are additive.

## 4.) Base Grant

The Bank will be providing \$1,007,400 (20% of the Base Capitalization Grant) in additional subsidy from the FFY2023 Base Capitalization Grant to eligible borrowers. This percentage is derived from the required minimum additional subsidization from the congressional appropriation (10%) and CWA (10%). Subsidization will be provided in the form of either principal forgiveness or grants to the following types of eligibilities:

- Any municipality that meets the state’s affordability criteria as established under the CWA section 603(i)(2);
- Municipalities that do not meet the state’s affordability criteria but that seek additional subsidization to directly benefit individual ratepayers in the residential user rate class that will otherwise experience significant hardship from increased rates due to the project; or  
to any eligible recipient for a project that implements a process, material, technique, or technology that addresses water or energy efficiency goals; mitigates stormwater runoff; or encourages sustainable project planning, and construction.

FFY	Base Capitalization Grant	Congressional Additional Subsidy	CWA Additional Subsidy	Total Subsidy Amount
		Required (10%)	Required (10%)	
<b>2023</b>	\$5,037,000	\$503,700	\$503,700	<b>\$1,007,400</b>

## 5.) BIL General Supplement Grant

BIL mandates that exactly 49% of funds provided through the CWSRF General Supplemental Capitalization Grant (\$\$6,958,040) must be provided as principal forgiveness and/or grants to those statutory eligibilities listed above, with a priority on reaching Disadvantaged Communities. For the Clean Water SRF program, disadvantaged communities are defined as those communities meeting the affordability criteria of the State, which is discussed in detail in Section B., below.

### **A. Green Project Reserve (GPR)**

The concept of the Green Project Reserve was first introduced in the 2009 American Recovery and Reinvestment Act. The GPR is a goal to reserve a portion of the CWSRF funds to facilitate certain project types other than traditional wastewater infrastructure. The intent of the GPR is to direct investment in the water sector toward projects that utilize green or soft-path practices that cost-effectively reduce the environmental footprint of water and wastewater treatment, collection, and distribution. These are projects that help utilities adapt to climate change, or enhance water and energy conservation, as well as projects that help communities to adopt more sustainable solutions to wet weather flows and promote innovative approaches to water management problems. All GPR projects must otherwise be eligible for CWSRF funding and must further the goals of the Clean Water Act.

This GPR goal has carried through with subsequent appropriations of the CWSRF, including the FFY 2023 budget. The Consolidated Appropriations Act of 2023 states that, for fiscal year 2023, to the extent there are sufficient eligible project applications and projects are consistent with State Intended Use Plans, not less than 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

Further, the BIL provides that if GPR is provided for in the annual appropriation, then the GPR is applicable to the BIL capitalization grants for the corresponding fiscal year. This means that the 10% GPR is applicable to both the BIL General Supplemental and the Emerging Contaminants capitalization grants for FFY 2023.

A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories: green infrastructure, water efficiency, energy efficiency, and other environmentally innovative projects. RIDEM's PPL and the Bank's annual open solicitation for projects will be deemed enough for these purposes because the solicitation was open to all GPR eligible projects.

The State agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 10% (\$503,700) of its Base Capitalization Grant and



10% (\$1,399,600) of its General Supplemental BIL Grant to meet EPA’s requirement.

<b>FFY2023</b>	<b>GRP (10%)</b>
<b>Base Capitalization Grant</b>	\$503,700
<b>General Supplemental</b>	\$1,399,600

In the past, because no entities qualified for the affordability criteria, the RI CWSRF program has historically made the GPR goal synonymous with its base additional subsidization requirement and provided principal forgiveness to this statutory eligible category to encourage such projects to apply for financing through the CWSRF.

Clean water loans expected to close in FY2023 with GPR-based principal forgiveness include:

- Narragansett Bay Commission \$50,000,000\*

\*Please note that it is anticipated that a portion of the NBC loan will qualify for GPR funding.

GPR qualifying loans identified to meet the 10% goal under the BIL General Supplemental grant are as follows:

- Narragansett Bay Commission \$50,000,000

Projects for GPR additional subsidization were identified in order of their rank on DEM’s Project Priority List with higher ranked projects being eligible for funding first. Projects must be ready-to-proceed, have GPR eligible components, and have submitted a financial application to RI Infrastructure Bank by the priority date of March 31, 2023.

## B. Affordability Criteria

The Bank revised the Affordability Criteria with last year's IUP for the distribution of additional subsidy to fulfill the intents and goals of the BIL to reach Disadvantaged Communities. The revised affordability is shown below.

### Affordability Criteria for Disadvantaged Communities

To assess affordability needs in the CWSRF, Rhode Island has established an Affordability Criteria for Rhode Island's municipalities and wastewater and drinking water utilities. After applying the Criteria, entities with an Affordability Index less than the statewide average may qualify for additional subsidization such as principal forgiveness. Indexed entities are grouped into tiers, with tiers further below the statewide average qualifying for increased levels of subsidization.

Once each year, prior to the release of the Intended Use Plan for the fiscal year, RI Infrastructure Bank shall use current data, funding availability and expected loan volume to update the calculation, tiers and thresholds; RI Infrastructure Bank may also establish additional eligibility provisions at its discretion. All RI municipalities shall be indexed along with selected drinking water and wastewater entities. Additional entities can be indexed on an as-needed basis.

The Affordability Index is calculated using the statutorily required variables in the following formula:

$$\text{Affordability Index} = \text{Median Household Income} * \text{Employment Rate} * \text{Population Ratio}$$

- **Median Household Income**<sup>1</sup> is a widely accepted metric of a household's ability to afford the cost of infrastructure projects. A community with higher median household income suggests higher ability to afford the cost of infrastructure.

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Median Household Income data

Municipalities and drinking water/wastewater systems serving over 10,000: Data source: Census Bureau, 2016-2020 American Tables S1903 Median Income in the Past 12 Months (2020 Inflation-Adjusted Dollars). Accessed August 2022. Link: <https://data.census.gov/cedsci/table?q=median%20household%20income&g=0400000US44,44%240600000&tid=ACSST5Y2020.S1903&tp=true>

Water systems entirely in one census tract such as University of Rhode Island are treated as small systems and use census tract level data (S1901 data source link below).

Drinking water and wastewater systems serving 10,000 or less; or in one census tract: Data is from a) an income survey of the entire water system or b) census tract level Census Bureau data. If a system serves multiple census tracts, the census tract with the lowest income is used. Census Bureau, 2016-2020 American Tables S1901 Median Income in the Past 12 Months (2020 Inflation-Adjusted Dollars). Accessed August 2022. Link:

[https://data.census.gov/cedsci/map?q=S1901%3A%20INCOME%20IN%20THE%20PAST%2012%20MONTHS%20%28IN%202019%20INFLATION-ADJUSTED%20DOLLARS%29&g=0400000US44,44%241400000&tid=ACSST5Y2020.S1901&cid=S1901\\_C01\\_012E&layer=VT\\_2020\\_140\\_00\\_PY\\_D1&mode=thematic&loc=41.6571,-71.4863,z8.8156](https://data.census.gov/cedsci/map?q=S1901%3A%20INCOME%20IN%20THE%20PAST%2012%20MONTHS%20%28IN%202019%20INFLATION-ADJUSTED%20DOLLARS%29&g=0400000US44,44%241400000&tid=ACSST5Y2020.S1901&cid=S1901_C01_012E&layer=VT_2020_140_00_PY_D1&mode=thematic&loc=41.6571,-71.4863,z8.8156)

- **Employment Rate**<sup>2</sup> represents the resident employment size divided by the size of the total labor force in the community. Higher employment rates suggest that a community has more residents able to afford the cost of infrastructure than a community with lower rates.
- **Population Ratio**<sup>3</sup> is the ratio of the current US Census Bureau population to the previous Census population expressed as a percentage. A percentage greater than 100% indicates communities with a growing population, and a percentage less than 100% indicates a shrinking population. A growing population indicates an increasing ratepayer base to absorb infrastructure costs.

Large wastewater and drinking water systems serving over 10,000 users shall be tiered based on the tier of the municipality they serve. Large systems serving multiple municipalities shall be tiered based on an index set to be a weighted average of each municipality served. Weighting shall be based on retail population served or flow data and come from publicly available sources or entity-provided data.

Small wastewater and drinking water systems serving 10,000 users or less shall be tiered based on median household income from an income survey as available or census tract data. If a system serves multiple census tracts, the census tract with the lowest income shall be used.

Eligible systems with an Affordability Index 71% or less of the statewide average shall be designated a tier 1 entity; systems with an Affordability Index between 72% and 85% shall be designated a tier 2 entity; systems with an Affordability Index between 86% and 100% of the statewide average shall be designated a tier 3 entity. Domestic limited liability companies and domestic profit corporations, excepting cooperatives, are not eligible for tiers 1 through 3.

The Affordability Index results are shown in Appendix 1. All 39 RI municipalities have been indexed, along with selected drinking water and wastewater entities. Additional drinking water and wastewater entities can be indexed on an as-needed basis.

The table below describes the FY24 Tiers with eligible communities listed. Entities not listed are either not eligible or have not been indexed.

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<sup>2</sup>

Employment data is from the RI DLT 2021 Annual Average Labor Force Statistics. Accessed August 2022. Link: <https://dlt.ri.gov/labor-market-information/data-center/unemployment-ratelabor-force-statistics-la.us>. Data source: RI DLT, Labor Market Information, updated 3/2022.

Water systems entirely in one census tract such as University of Rhode Island use census tract level data from the 2020 American Community Survey 5-Year Estimates. Link: [https://data.census.gov/map?t=Employment+and+Labor+Force+Status&g=0400000US44\\$1400000\\_1400000US44009051400&tid=ACSDP5Y2020.DP03&cid=DP03\\_0004PE&layer=VT\\_2020\\_140\\_00\\_PY\\_D1&mode=the\\_matic&loc=41.5616,-71.2036,z9.6129](https://data.census.gov/map?t=Employment+and+Labor+Force+Status&g=0400000US44$1400000_1400000US44009051400&tid=ACSDP5Y2020.DP03&cid=DP03_0004PE&layer=VT_2020_140_00_PY_D1&mode=the_matic&loc=41.5616,-71.2036,z9.6129)

<sup>3</sup> Population data is from RI Division of Statewide Planning. Accessed August 2022. Link: <https://planning.ri.gov/ri-census-2020>. Source: US Census Bureau, 2020 Census and 2010 Census.

**Table 3: Tiers with eligible communities (% = Community Index as Percentage of State Index)**

<b>Tier 1</b> Affordability Index <b>71% or less</b>	<b>Tier 2</b> Affordability Index between <b>72% - 85%</b>	<b>Tier 3</b> Affordability Index between <b>86% - 100%</b>
City of Central Falls 54% City of Woonsocket 62% Woonsocket WWTF 69% City of Providence 71%	Tiverton Wastewater District 76% City of Pawtucket – 76% Narragansett Bay Commission 79%	City of East Providence 86% Town of West Warwick 89% West Warwick WWTF 90% Town of Warren 92% Town of North Providence 94% City of Newport 96% Town of Johnston 96% Newport WWTF 99% Town of Bristol 100% Town of Narragansett 100%  Note: Funding only available in this tier if no ready-to-proceed projects remain in Tier 1 and Tier 2

Clean water projects expected to close in FY24 with affordability-based principal forgiveness include:

**Allocating Principal Forgiveness**

Projects closing loans in FY24 shall be allocated principal forgiveness according to the following table.

**Table 4: FY24 Tiers with thresholds and principal forgiveness**

<b>Tier</b>	<b>Index Threshold</b>	<b>CW SRF Principal Forgiveness</b>
<b>Tier 1</b>	<b>0-71%</b> of state average	40% of project cost for projects meeting priority dates
<b>Tier 2</b>	<b>72-85%</b> of state average	20% of project cost for projects meeting priority dates

<b>Tier 3</b>	<b>86-100%</b> of state average	Funding possible in this tier if no ready-to-proceed projects remain in Tier 1 and Tier 2
<b>All Public Entities</b>		Forgiveness available for Green Project Reserves by order of PPL ranking. 25% of GPR project cost.

Principal forgiveness amounts are contingent upon funding availability and readiness to proceed. The Bank strives to accommodate all borrowers and, for financial applications not received by the priority date, or not ready-to-proceed, shall allocate principal forgiveness in the order in which ready-to-proceed financial applications are received. Affordability-based principal forgiveness is additive to GPR-based principal forgiveness.

### **C. Criteria and Methods for Distribution of CWSRF Funds**

RIDEM has an integrated priority ranking system, approved by EPA Region I. A PPL is developed annually using this ranking system (Attachment A).

The CWSRF will provide loans for up to 100% of eligible project and finance costs, consistent with Federal limitations on the use of CWSRF funds, with the State determining the eligibility based on state-developed criteria.

The Bank and RIDEM take several factors into consideration when determining which projects from the PPL will be funded by the CWSRF. These factors include:

- Relative ranking on the PPL;
- Indication that the eligible potential borrower has the authority to encumber debt for water pollution abatement projects from the Bank;
- Indication that eligible potential borrower will make an application to the CWSRF for financing;
- Indication that the eligible potential borrower’s credit quality is adequate;
- Indication that RIDEM will approve the project in the form of a Certificate of Approval; and
- Indication that the project is ready to proceed within six months of closing the loan.

#### **D. By-Pass procedure and revisions to the Intended Use Plan**

The CWSRF program may fund any eligible project that appears on the Project Priority List, regardless of priority order. For this IUP, the list of projects that are intended to be funded are presented in Table 2. In the event that projects identified for funding in this IUP are unable to proceed, funding assistance for these projects will be by-passed and other eligible projects from the PPL will be selected for funding based on procedures in the priority determination system, readiness to proceed, and availability of funds. The projects on the PPL will have been previously identified and approved through a public participation process, and are herein included in Attachment A, which was additionally included in the public notice requirement for this IUP under 40 C.F.R. Section 35.3150 (c). Such change in ultimately funded projects shall not require an amendment to this Intended Use Plan.

Throughout the course of the year the need may arise to amend this IUP. In such an event, the Program will make applicable revisions and post the proposed IUP for public notice and comment before finalizing and sending to EPA for approval.

#### **E. ASSURANCES AND SPECIFIC PROPOSALS**

The Bank provides the necessary assurances and certifications as part of the Operating Agreement (OA) between the Bank and EPA. Rhode Island's OA includes requirements of the following sections of the law:

##### 602 (a): Environmental Reviews

RDEM has formulated the State Environmental Review Process (SERP) which has been approved by EPA. For FFY2023 funds, we expect that most projects will require a Finding of No Significant Impact (FONSI) or a Categorical Exclusion. Non-treatment works projects do not require environmental review under the SERP.

##### 602 (b)(3): Binding Commitments

The Bank certifies that it will enter into binding commitments for 120% of each quarterly payment received under the Capitalization Grant(s) within one (1) year of receipt of that payment into the EPA/ACH payment system.

##### 602 (b)(4): Expeditious and Timely Expenditures

The Bank will expend all funds in the CWSRF in a timely and expeditious manner. Disbursements for approved CWSRF projects are dependent upon the accuracy of construction schedules and consistency with planning. The Bank agrees that it will not provide assistance to any project unless that project is consistent with plans developed under Section 205(j), 208, 303(e), 319 or 320.

## VI. EQUIVALENCY AND FEDERAL REQUIREMENTS

By statute, certain Federal requirements apply to assistance provided “in an amount made directly available by” the Federal capitalization grant. A State can choose a project or (group of projects) equaling the amount of the Federal Capitalization Grant to comply with these requirements. These projects are “equivalency projects”. And the selected equivalency project(s) must complete certain Federal requirements. FFATA compliance requires that one single set of projects is selected to satisfy all Federal equivalency requirements. Project(s) selected for equivalency must contain documentation verifying compliance with all the following Federal requirements:

- Single Audit Act - documented in the assistance agreement.
- Disadvantaged Business Enterprise - MBE/WBE – documented in the assistance agreement, bid documents & DBE 5700-52A Reports (MBE/WBE Report to EPA).
- A/E Procurement (applicable to CWSRF only) – Documented by a certification.
- Signage - documented in the assistance agreement - documented by State Checklist or concurrence letter and assistance agreement.
- Federal Socioeconomic Crosscutters -documented by State Checklist or concurrence letter and assistance agreement.
- FFATA – Federal Financial Accountability and Transparency Act - Documented by reporting to FSRS.gov.
- Telecommunications Equipment and Services Prohibition – documented in the assistance agreement.
- Federal Flood Risk Management Executive Order -documented in the assistance agreement.
- BABA (starting with FFY 2022 Capitalization Grants) - documented in the assistance agreement.

Rhode Island currently applies equivalency for reporting purposes to the following federal requirements:

- Federal Funding Accountability and Transparency Act (FFATA)
- Architectural and Engineering Services (A/E) Procurement
- Single Audit Act

All other equivalency requirements including federal cross-cutters, the Disadvantaged Business Enterprise (DBE), Signage (for all capital projects), Telecom Equipment & Services 2 CFR 200.216 and Executive Order Flood Mitigation and BABA are applied to all CWSRF projects, regardless of source of funding.

The A/E requirement is applied to all projects used for FFATA reporting. RI has a state qualification-based procurement requirement and will be comparing it to the federal A/E requirement for use as a qualifying State A/E procurement process. Until then, RI will continue to have borrowers apply the federal Brooks Act process for A/E procurements and certify to such in their CWSRF applications.

While no changes are being proposed for this IUP, RIIB and DEM are in communication regarding the potential value in applying other equivalency requirements to selected equivalency projects in the RI CWSRF program for the future. The benefits of designating equivalency projects include lessening the burden of reporting and record keeping in administration of the program, while potentially minimizing the burden to comply with the Federal requirements on certain borrowers such as small systems or disadvantaged communities. Currently, the RI CWSRF program extends the Federal requirements to all borrowers as a matter of fairness, and because the State of RI applies some of the same requirements.

The Bank can combine both the Base and BIL General Supplemental funds to comply with the reporting equivalency requirements and designate a project(s) equal to the amount of the capitalization grants as federal projects. For example, if the Bank closes on one loan that can equal both the Base and General Supplement capitalization grants, then this loan can be designated as the equivalency project and will need to fulfill the equivalency requirements for both FFY 2023 Base and General Supplemental Grants.

Equivalency cannot be applied to the BIL Emerging Contaminants grant. The projects that are funded with this grant must meet all of the federal requirements.

For FFY2023 Base and General Supplemental grants, the Bank will be reporting Narragansett Bay Commission as the FFATA projects.

The Bank and RIDEM will comply with the equivalency requirements as set forth above. Additional information can be found below in the reporting requirements.

## VII. REPORTING REQUIREMENTS

The Bank and RIDEM are committed to ensuring that all reports and electronic data are submitted by their deadlines.

- **Federal Funding Accountability & Transparency Act (FFATA)** – The Bank is committed to transparency and accountability under FFATA (reporting requirements may be obtained at their website <https://fsrs.gov/>). The Bank program information, IUP's, Bank Annual Reports, Audited Financials and other program materials will be posted on the Bank's website: [www.riib.org](http://www.riib.org).
- **SRF Data System** -This system has updated and consolidated multiple reporting databases, including the former Clean Water Benefits Reporting (CBR) and National Information Management System (NIMS). Project milestones and other pertinent information is reported through EPA's SRF Data System. The Bank and RIDEM are committed to entering data into the EPA SRF Data System to evaluate the benefits of the RI CWSRF Program. The Bank and RIDEM will continue its quarterly reporting in the OWSRF EPA Database.



- **Utilization of Small, Minority and Women’s Business Enterprise (aka federal DBE requirement)** – The Bank and RIDEM agree to comply with the requirements of EPA’s program for DBE in procurement under assistance agreements contained in 40 CFR, Part 33.
- **Single Audit Act** –In accordance with OMP Circular A-133, which implements the single audit act, the Bank hereby agrees to obtain a single audit from an independent auditor if it expends \$750,000 in total Federal funds in any fiscal year. Within nine months after the end of a recipient’s fiscal year or 30 days after receiving the report from the auditor, the Bank shall submit a copy of the SF-SAC and a Single Audit Report Package to the Federal Audit Clearing House. All projects that receive federal dollars are notified of the single audit regardless of the amount. If they expend over \$750,000 in federal funds, the sub-recipient will be required to obtain a Single Audit.
- **EPA Annual Report** – The Bank agrees to provide an Annual Report to EPA by September 30, the first fiscal year after it receives payments under title VI. The Bank will submit this report to EPA according to the schedule established in the grant agreement.
- **EPA Sustainability Policy Implementation** - The Bank and RIDEM continue to support the implementation of EPA’s Infrastructure Sustainability Policy by funding only wastewater treatment projects that are consistent with local wastewater facilities plans, prioritize projects through an integrated priority determination system that places emphasis on public health and water quality protection projects and awards extra points for “smart growth” projects and projects that incorporate GPR elements, and tie Additional Subsidization to GPR projects. While recently most of the projects currently funded are mandated through compliance orders or consent agreements, both the Bank and RIDEM recognize that has not been the case in the past nor will it be in the future. The Program will therefore continue to investigate means by which other sustainability measures (e.g., effective utility management, asset management, and integrated water resource management) can be further incorporated into funding decisions to build a “pipeline” of sustainable projects eligible to receive CWSRF funding.
- **Additional Requirements** - To comply with federal reporting requirements such as DBE reporting and Davis-Bacon for the FFY2023 Capitalization Grant, the Bank will apply these requirements to all of its treatment works projects, as well as all other requirements such as the Single Audit Act and federal environmental crosscutters. At the time of loan closing, the Bank will designate a borrower for FFATA reporting.

#### **A. Davis-Bacon Wage Rates**

Section 602(b)(6) of the CWA permanently applies the prevailing wage (Davis-Bacon) provision of FWPCA Section 513 to any projects for treatment works that are funded by the CWSRF. Consistent with EPA’s prior implementation of this provision, application of

the Davis-Bacon Act requirements extends not only to assistance agreements funded with capitalization grants, but to all CWSRF-funded projects involving the construction of treatment works regardless of the source of the funding (e.g., prior years' appropriations, state match, bond proceeds, interest earnings, principal repayments, etc.). Any project that is considered a "treatment work" as defined in the CWA Section 212, now incorporated into the CWA as Section 502(26), must comply with Section 513, regardless of which eligibility it is funded under (see section 603(c)). It should be noted that the RI CWSRF program does not consider projects constructing or implementing green stormwater infrastructure to be treatment works.

## **B. American Iron & Steel (AIS) and Build America Buy America Act (BABA)**

On June 10, 2014, WRRDA amended the CWA to include permanent requirements for the use of AIS in CWSRF financed treatment works projects. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act of FY2014. As such, all CWSRF treatment works projects must comply with Section 608 of the CWA for implementation of the permanent AIS requirements. Therefore, all guidance adopted for FY2014 apply for the permanent AIS requirements for the CWSRF.

BIL added a new Build America, Buy America Act of 2021 (BABA) requirement to the CWSRF program. BABA expands existing American Iron and Steel (AIS) requirements to include construction materials and manufactured goods. All steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall used in infrastructure projects for federal financial assistance programs must be produced in the United States. BABA applies to all projects, including treatment works and non-treatment works projects.

The effective date of BABA is May 14, 2022, which means any grants awarded on or after that date must be fully compliant with BABA unless they qualify for the waivers.

The Federal Office of Management and Budget (OMB) released program guidance to agencies on April 18, 2022.<sup>4</sup>

There are currently three approved BABA waivers:

- 1) Adjustment Period Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for SRF Projects that have Initiated Design Planning<sup>5</sup>

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<sup>4</sup> <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

<sup>5</sup> [https://www.epa.gov/system/files/documents/2022-09/EPA%20-%20SRF%20-%20Final%20Waiver%20-%20Adjustment%20Period\\_September%202022%20-%20Signed.pdf](https://www.epa.gov/system/files/documents/2022-09/EPA%20-%20SRF%20-%20Final%20Waiver%20-%20Adjustment%20Period_September%202022%20-%20Signed.pdf)

- 2) De Minimis General Applicability Waiver of Section 70914(a) of P.L.117-58, Build America, Buy America Act, 2021 for U.S. Environmental Protection Agency Financial Assistance Awards and Procurements<sup>6</sup>
- 3) Small Project General Applicability Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for U.S. Environmental Protection Agency Financial Assistance Awards.<sup>7</sup>

### **C. Fiscal Sustainability Planning**

For treatment works proposed for repair, replacement, or expansion, the EPA requires that Program borrowers develop and implement a fiscal sustainability plan (FSP) that includes:

- an inventory of critical assets that are a part of the treatment works;
- an evaluation of the condition and performance of inventoried assets or asset groupings;
- a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or a certification that the borrower has developed and implemented a plan that meets these requirements.

The Borrower shall develop and implement the FSP for the Planning Area in accordance with all statutory requirements. The FSP for the Planning Area shall be submitted to the RIDEM with a copy to the Bank prior to closing on any final design or construction Loan.

### **D. Cost and Effectiveness**

Starting with the loan applications submitted as of April 1, 2016, EPA requires that borrowers provide a certification that they:

- have studied and evaluated the cost and effectiveness of the processes, materials, techniques and technologies for carrying out the proposed project; and
- have selected, to the maximum extent practicable, a project that maximizes the

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<sup>6</sup> <https://www.epa.gov/system/files/documents/2022-10/EPA%20BABA%20De%20Minimis%20Waiver%20Final%20Oct%202022.pdf>

<sup>7</sup> <https://www.epa.gov/system/files/documents/2022-09/Small%20Proj%20Gen%20App%20Waiver%20BABA%20EPA.pdf>

potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:

- the cost of constructing the project;
- the cost of operating and maintaining the project over the life of the project; and
- that the cost of replacing the project.

The Bank has developed a Cost and Effectiveness Self-Certification Form stating that as a condition for receiving assistance through the SRF, the Borrower hereby certifies that per Section 602(b)(13) of the WRRDA the project is Cost Effective.

#### **E. Architectural and Engineering (A/E) Services Procurement**

The 2014 WRRDA Amendments requires that A/E services that are paid with Federal funds for Clean Water projects be procured using the qualifications-based selection process under Chapter 11 of title 40, United States Code or an equivalent state qualifications-based requirement.

This federal requirement, which is cross-referenced in State Law for all municipalities utilizing federal funds, will be implemented for all projects receiving CWSRF funding for A/E services.

The RI CWSRF Program will report A/E usage in the FFATA system only for equivalency reporting purposes.

### **VIII. OTHER REQUIREMENTS**

#### **A. Project Accounting**

The EPA requires that project accounts be maintained in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets. The Bank has always required that project accounts be maintained in accordance with generally accepted government accounting standards, but not particularly with respect to the reporting of infrastructure assets. The most recent applicable standard is Governmental Accounting Standards Board (GASB) Statement No. 34, issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. The Bank has changed the standard condition in the Project Regulatory Agreement to reflect this.

## **B. Signage and Awareness**

The Bank agrees to comply with the Signage Guidance and requirements for Base and BIL to enhance public awareness of EPA assistance agreements. The Bank will require the EPA logo on all project signs.

In order to implement EPA Memo dated June 3, 2015 pertaining to Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, RIDEM and RIIB have required a project sign for all construction projects and will continue to do so for the projects receiving funding from the FFY 2023 allotments. There will be the need for two different project sign designs this year, one for BIL subsidized projects and the established sign that RI uses non-BIL projects.

In December 2022, EPA issued a memo outlining the guidelines for implementing the Bipartisan Infrastructure Law signage term and condition for the SRF programs, which included a slogan, "Building a Better America." Shortly thereafter, in February 2023, the White House came out with a Controller alert which revised the previous BIL-related signage requirement to reflect a new slogan, "Investing in America." Guidance is anticipated from EPA and will be followed for BIL funded projects under this IUP.

The BIL signage term and condition requires a physical sign displaying the official BIL sponsored emblem and EPA logo be placed at construction sites for BIL-funded projects. For the Clean Water and Drinking Water SRF programs, this requirement applies only to the following projects:

- Construction projects identified as "equivalency projects" for BIL general supplemental capitalization grants;
- Construction projects that receive additional subsidization (grants or forgivable loans) made available by BIL general supplemental capitalization grants;
- All construction projects funded with BIL emerging contaminants capitalization grants;
- All construction projects funded with BIL lead service line replacement capitalization grants.

Rhode Island will ensure that assistance recipients for which this requirement is applicable are aware of the requirement and the signage specifications. RIIB will include this requirement in applicable assistance agreements.

The purpose of the signage is to enhance awareness and promote transparency on construction and non-construction projects and activities funded through the CWSRF and the BIL. In addition to requiring appropriate signage for all construction projects. The RI CWSRF Program will require that recipients incorporate statements of acknowledgement

in all published materials covering activities funded by BIL, in accordance with the guidance.

### **C. Public Review and Comment**

The Public Notice of the draft PPL was posted for public comment in the Providence Journal on Monday, May 22, 2023 and the draft IUP was put on Public Notice in the Providence Journal on Tuesday, June 6, 2023. Additionally, the draft IUP has been posted on the Bank's website and the draft PPL has been posted on the RIDEM website providing the opportunity for public comment for thirty (30) days from the date of posting. Any public comments received will have been reviewed by the Bank and RIDEM collectively and included within the final IUP for submission to EPA.

### **D. Summary of Public Comments Received during Public Notice period for the Draft SFY 2024 PPL and responses to those comments.**

#### **Question:**

We have looked through the draft PPL and I'm not sure whether to submit a comment regarding rank of a specific project or not. Does the rank of a given project affect the ability to receive funding? If the rank wouldn't hinder our ability to get a project funded, then we don't necessarily need to submit a comment. My concern is that the ASQAH sewer capacity increase was ranked so low on the PPL (and for all NK projects), when it is a high priority internally at the Town. We are going through an analysis right now to determine how much more flow can be handled in this sewer line (which is a bit of a bottleneck). If we are at capacity, we will not be able to accommodate any more sewer connections, as this is the major line that connects our whole system to QDC. That would also halt the possibility of all the other sewer extension projects (ranked much higher on the PPL).

#### **Response:**

The score rarely makes much of a difference, but you are welcome to submit comments. Pump station projects get funded all the time and they generally get only 4 points. The scoring criteria gives collections systems much lower points than process treatment upgrades or CSO improvement projects. The criteria and points values are contained within the appendix for the PPL rules here: <https://rules.sos.ri.gov/regulations/part/250-150-20-2>

It sounds like North Kingstown may wish to pursue this project soon. If that is the case and you are looking for financing from the CWSRF, please let us know and we can schedule a meeting with RIIB to go over the application procedures and the requirements of the program. Please let me know if you have any questions.

#### **Question:**

What does GPR stand for on the draft priority list?

**Response:**

It means Green Project Reserve. The projects noted with a 'yes' for GPR might include qualifying parts of the project that will satisfy this requirement. The CWSRF is required to Reserve a portion of our annual funds to go towards eligible Projects that are 'Green' in nature such as green stormwater infrastructure or energy efficiency projects for a wastewater treatment facility. Additionally, GPR projects may be eligible for some principal forgiveness, if funds are available.

**Question:**

I'm only peripherally familiar with the CWSRF loan program, but can those funds be used to cover the cost of public sewer feasibility studies? I'd be interested in studying it. The town is prioritizing economic growth to help broaden the tax base so it would be helpful to understand what the permitting, design and construction costs would be against the anticipated return on investment. The area of interest is along a portion of Route 138.

**Response:**

The Clean Water SRF can finance planning for water quality projects (not economic development). There would need to be a reasonable expectation that the planning will lead to an eligible capital project. I'm not sure that the CWSRF could fund a feasibility study such as you describe. I would need to know more about the water quality intentions, because the RI SRF does not fund wastewater infrastructure for economic growth purposes. We can only fund for water quality purposes, such as to extend publicly-owned sewer to known areas of failing septic systems so that people can connect. The CWSRF can support public wastewater infrastructure for infill in growth centers with existing development that are identified in RI State Guide Plan for Land Use 2025, particularly if there are existing wastewater generated water quality problems that will be addressed. If the town's needs have to do with economic development of undeveloped/underutilized land, you might want to look into USDA Rural Development funds or see what RI EDC might have available. Let me know if you want to talk or if you have any more questions.

**Question:**

This is my first time participating in the Clean Water State Revolving Fund so I am a little unclear in the process. I had requested \$2M for Portsmouth's Community Septic System Loan Program which seems to get funded every year. Additionally, the Town/School Department has been informed that one of our elementary schools (Hathaway Elementary) needs to have the OWTS replaced. I had also requested \$600,000 for that project which scored 27 points. Now that DEM has the project priority list posted you are seeking public comments with written comments to be submitted by June 21st. My question is who are those public comments supposed to be from? Is it helpful for the

Portsmouth School Committee and/or School Superintendent to submit a letter of support/need with regard to our request for the \$600,000 to replaces the Hathaway OWTS?

**Response:**

Public comment may come from anyone. You asked if it is 'helpful' to have letters of support submitted. People have done this in the past. They are not necessary, but they can be insightful about the need for the project, and will be accepted as public comment should anyone wish to so submit.

I understand that the process does not seem clear. In order to apply for a Clean Water State Revolving Fund loan, the town would first need to have their projects listed on the project priority list. This is just the first step in a long process and is a federal requirement. Being on the list does not guarantee financing, nor is it in itself an application for financing. The potential applicant needs to then apply to both RIIB for a loan and to RIDEM for approval of the project for a loan in the form of what is called a "Certificate of Approval," or 'CA.' The Town of Portsmouth's CSSLP already has a CA, so it only needs to be on the PPL in the fiscal year that you apply for a loan to replenish the CSSLP fund.

If the town is ready to apply for a loan for your other needed projects, you may start the process now for projects that are on the PPL. RIIB had solicited projects for loans around the same time the PPL projects were requested. We accept applications year-round, so there is no deadline to apply for the CWSRF, but the project must be on the PPL for that fiscal year.

Please let me if this helps clarify things and if you have any other questions. We could also set up a meeting with RIIB to talk more about the process.

**E. Response to Program Evaluation Report (PER) and Audit Findings**

The below action item and recommendation was listed in the PER for SFY 2022 (7/1/21-6/30/2022).

**Action Items and Recommendations for this Year's Review:**

Rhode Island will have a discussion with EPA on the reporting of Affordability Criteria or Hardship Communities in NIMS and the OWSRF database by June 30, 2023.

Response: The Bank had a call with EPA on May 22, 2023 to discuss this.



## **IX. Attachments**

- A. Project Priority List
- B. Table 1 -RIDEM Administrative Costs
- C. Table 2 – Projected Funding List
- D. Sources and Uses Table
- E. Payment Schedule for ACH
- F. Attorney General Certification
- G. RI Infrastructure Bank and RIDEM Memorandum of Understanding (MOU)
- H. RI Infrastructure Bank Loan Policies and Procedures
- I. RIDEM Rules and Regulations

## A. Project Priority List

**B. Table 1 - RIDEM Administrative Costs**

**C. Table 2 – Project Funding List**

## D. Sources and Uses Table

## **E. Payment Schedule for ACH**

**F. Attorney General Certification**

**G. RI Infrastructure Bank and RIDEM Memorandum of Understanding**



## **H. RI Infrastructure Bank Loan Policies and Procedures**

## **I. RIDEM Rules and Regulations**