

July 22, 2024

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Sent via email to [defamail@ohio.epa.gov](mailto:defamail@ohio.epa.gov)

Re: Comments on Ohio's Draft PY 2025 Drinking Water Assistance Fund Program  
Management Plan and Intended Use Plan

To Whom It May Concern,

Thank you for the opportunity to comment on the Draft Program Year 2025 Drinking Water Assistance Fund (DWAF) Program Management Plan and Intended use Plan<sup>1</sup> (hereinafter "PMP") for Ohio's Drinking Water State Revolving Fund ("SRF"), administered by the Division of Environmental and Financial Assistance ("DEFA") within Ohio EPA. These comments are submitted on behalf of the Alliance for the Great Lakes, Black Environmental Leaders, BlueGreen Alliance, Cleveland Plumbers Union Local 55, Environmental Policy Innovation Center, Junction Coalition, Ohio Environmental Council, and Ohio State Association of the United Association of Journey and Apprentices of the Plumbing and Pipefitting Industry. Our primary focus in these comments is on the lead service line portion of the PMP, though we note significant interest in other types of drinking water infrastructure needs funded by the DWAF, including those closely related to lead service line replacement like water main replacement (which also goes to water loss and issues with harmful bacteria and disinfection byproducts) and those addressing emerging contaminants.

These comments reflect our shared goals: ensuring that the most SRF support goes to areas with the greatest lead burden and overall disadvantage, and increasing capacity and community engagement as necessary to these ends and as goods in themselves. Thus, at the outset, we recognize and thank Ohio EPA for taking significant steps in recent years to better distribute DWAF funding to disadvantaged communities within the state. We similarly appreciate Ohio EPA recognizing the serious public health threat posed by lead in drinking water, and revising its DWAF administration to help deliver more critical funding to communities committed to getting the lead out. Based on an initial review of the Projects Eligible for Lead Service Line Funding, it appears that these shifts have helped direct significant levels of principal forgiveness and zero-interest loans to communities with the state's greatest lead burdens and need for financial assistance to abate this health hazard. Below we focus on how Ohio EPA can further enhance

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<sup>1</sup> Available at <https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/29/documents/ofa/2025-DRAFT-WSRLA-PMP-062024.pdf>

transparency and accessibility regarding how it is distributing and maintaining the DWAF, as well as propose revisions that may help target more assistance to disadvantaged communities and ensure that communities are proceeding to finalized agreements for lead service line replacement.

The injection of funding and modification of requirements for SRFs under the landmark Bipartisan Infrastructure Law (“BIL”) has triggered an uptick in activity around SRFs and how states administer their programs. Our organizations have deep interests in water infrastructure funding and equity, and so how states like Ohio are responding to BIL. We also are committed to advocacy at local and state levels within the Great Lakes region, and for that reason hold more general interests in these issues well beyond the sunset of BIL.

We welcome the opportunity to build an ongoing relationship with DEFA and other Ohio EPA staff regarding drinking water infrastructure needs and financing/funding. While Ohio EPA has reserved significant discretion over the administration of the DWAF to be exercised in the annual PMP, the window for review and comment on each year’s PMP is limited and does not provide adequate time for more in-depth analysis and exchanges, let alone decisions, over more significant revisions to the program. We thus focus our comments here on relatively easy to implement changes that should be undertaken in the final PY 2025 PMP; flag more in-depth issues for further examination and discussion during the balance of the year; and request follow-up meetings with DWAF staff.

We also recognize that the task of getting the lead out across the state is a large and pressing matter of public health and safety, falling heavily on disadvantaged communities both urban and rural. Thus, we encourage Ohio EPA to work with us to leverage the biennial budget discussions towards eliminating this drain on people and the state’s economy as soon as possible. Together we have the opportunity to take Ohio out of the top states in the nation burdened by lead in drinking water.

## I. Summary of Past Comments on DWAF.

In the past, our comments have asked Ohio EPA to:

- improve the definition of disadvantaged community to better target principal forgiveness;
- conduct a review of technical assistance components to ensure alignment with equity and resilience goals;
- maximize set-asides for lead service line replacement and provide direct grants and other assistance for pre-construction needs;
- include water affordability as an SRF goal; and
- clarify how readiness-to-proceed criteria are assessed and scored.

We incorporate these past comments by reference here and build on them below.<sup>2</sup>

## II. Comments to Address and Implement in the Final PY 2025 PMP: Transparency and Accessibility.

Transparency and accessibility are critical aspects of the annual PMP process. In this round, we raise the following comments to help improve transparency and accessibility. These comments generally break down into two topics: (a) sources and uses of the funds, and (b) display of data in the Appendix B tables<sup>3</sup>. Further discussion of the substantive intersection between these topics - i.e., what we would like to glean from the requested information and how the information informs potential changes in policies governing the distribution of funds that we support - is provided in Section III. We also request creation of an interactive data dashboard to aid transparency and accessibility, recognizing that such a product will take significant time to design and roll out.

### A. Clarify How Much Funding is Available in This Project Year and From Which Sources, and How Funding Is Being Disbursed.

***Differentiate carryover, recaptured, and leveraged funds in a clear summary table of available funds for projects in PY2025 and provide further itemization of carryover and recaptured funds.*** From the viewpoint of a public reader, the PMP contains gaps in its accounting of available funds for projects in PY 2025, which in turn impact the public's ability to understand DWAf administration. In particular, knowing the expected amount of leveraged funds, as well as the amounts of carryover funds from specific sources (particularly funds carried over from unspent capitalization grants) and categories of recaptured funds, is necessary to assess program sustainability and effectiveness. We request best-estimates for PY 2025 be included in Table 3; however, we recognize that Ohio EPA may face some uncertainty regarding these figures, particularly with respect to sources that reflect past performance of the fund. We also acknowledge that the further itemization requested may require substantial staff effort, extending beyond the current PMP cycle, and thus look forward to further discussing how Ohio EPA might fulfill this request in the coming year.

According to the main project table in Appendix B, Ohio EPA “anticipates sufficient funding for all projects ready to proceed in PY 2025.”<sup>4</sup> This statement comes as a footnote to the main table, which itself totals over \$2 billion in projects. At the same time, Table 3 on page 9 entitled

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<sup>2</sup> Comments on the PY 2023 PMP are available at

[https://drive.google.com/file/d/10rhpSKSXxCWUPpaaSZ7Eu5G5g6ErFUWU/view?usp=drive\\_link](https://drive.google.com/file/d/10rhpSKSXxCWUPpaaSZ7Eu5G5g6ErFUWU/view?usp=drive_link),

<sup>3</sup> The Appendix B tables read to us as internal staff team spreadsheets, and our comments are focused on ways to modify these tables to improve consistency and better serve public information purposes.

<sup>4</sup> See PMP Appendix B, footnote on page 11 of the Project Priority and Intended Projects List for PY 2025.

“Sources and Uses of Funds for Program Year 2025,” which summarizes the funding to meet these project requests, totals approximately \$500 million, almost \$200 million of which is carryover funds. Notably, Table 3 contains no information in the dollar column for two items: recaptured funds from PY2024 and leverage funds. The numeric discrepancy between the footnote to the main project table in Appendix B and Table 3 implies that recaptured and/or leveraged funds may total up to \$1.5 billion, or three times the amount shown in Table 3 available from base, supplemental, repayment, and carryover funds that the table does quantify. Ultimately the reader is left guessing at how much funding Ohio EPA anticipates making available in this program year, as well as the sources of this funding and why those sources are available in the amounts anticipated.

We are particularly interested to know how much of the carryover funds from PY 2024 are from lead service line federal capitalization grants, as this would indicate the degree to which lead service line replacement projects are moving forward to construction. (Ways to help improve the rate and number of lead service line replacement projects moving forward are taken up elsewhere in these comments.) We are also interested in knowing whether recaptured funds are substantial, and if so whether they break down into any specific categories that indicate applicants are consistently achieving significant efficiencies in lead service line replacement and/or other similar project areas, to further aid project applicants in developing successful applications.

Additionally, if Ohio is leveraging available federal and state capitalization and other funds as the primary mechanism for fulfilling all requests that are ready to proceed in PY 2025 (i.e., the dollar amount is in fact substantial compared to other sources itemized in Table 3), other Great Lakes/Midwest States would benefit from seeing the ratio of leveraged to allocated funds. Clarity on this point and learning Ohio EPA’s methods and degree of success in dollars available to fund projects would benefit the region as a whole, as several states report that they are over-subscribed due to record interest and anticipate funding projects at well below the level it appears Ohio EPA anticipates allocating.

We thus request that Ohio EPA include the anticipated dollar amounts from leveraged funds in Table 3 on page 9, thereby providing a more complete accounting of the total \$2 billion reflected on the project priority list and that Ohio EPA anticipates satisfying. We also request that Ohio assess the degree to which the substantial carryover funds are related to lead service line replacement projects not moving forward, and include the resulting amount of lead service line carryover in Table 3. Lastly, we request that Ohio EPA similarly quantify and itemize the recaptured funds category.

**Clarify the degree of principal forgiveness available to disadvantaged communities for lead service line replacement projects.** Both the draft PMP itself<sup>5</sup> and the August 2023 factsheet on lead service line DWAF funding<sup>6</sup> state that communities “may receive *up to* 53-percent of project costs as principal forgiveness” (emphasis added). This wording implies that qualifying disadvantaged communities also may receive principal forgiveness in proportions *less than* 53-percent of their project costs. In other Great Lakes states such as Wisconsin and Illinois (and as taken up below in more detail), the percent of project costs available as principal forgiveness varies by level of disadvantage<sup>7</sup>, making this a reasonable interpretation of Ohio’s approach given the quoted language in the PMP (and the lack of a principal forgiveness amount column in the lead service line table, see next comment).

We understand, however, that Ohio EPA is applying a flat ratio of principal forgiveness-to-loan for applicants qualifying as disadvantaged for purposes of lead service line financing.<sup>8</sup> If this is correct, we request that Ohio EPA clarify in the final PMP that applicants qualifying as disadvantaged for lead service line replacement purposes are eligible to qualify for a flat 53:47 ratio between principal forgiveness and zero-interest loan (but see comments below about maximizing the set-asides to reduce the principal forgiveness-to-loan ratio, as well as leveling percent of principal forgiveness to degree of disadvantage). The next section recommends edits to the lead service line project table to help further clarify this issue.

**B. Provide Key Data and Descriptive Information on Projects, Focusing on Increasing Accessibility and Consistency.**

Ohio EPA should make data on project priority lists more accessible to the public, project proponents seeking loan assistance, and advocates for equitable lead service line replacement in Ohio communities. It can do so by providing additional data in project priority lists in Appendix B that inform project prioritization for principal forgiveness, and data informing lead service line replacement burden, disadvantaged community status, readiness-to-proceed criteria, and project benefits (i.e., project descriptions).

We also request that Ohio EPA make the following specific changes to the project eligibility lists in Appendix B, organized by list title for ease of reference:

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<sup>5</sup> See PMP at page 7.

<sup>6</sup> <https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/29/documents/ofa/LSL-FS.pdf>.

<sup>7</sup> Wisconsin uses this approach for both its Drinking Water and Clean Water SRFs, while Illinois applies a graded approach to additional subsidization for its Clean Water SRF.

<sup>8</sup> We note that it appears other commenters may need clarification as well, given that multiple parties raised questions about how principal forgiveness was calculated in the last round. See DWAF Program Year 2024 Project Management Plan at Appendix M, Issue 2, available at <https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/29/documents/ofa/DWAF-PMP-2024.pdf>.

### *Projects Eligible for Lead Service Line Funding (pdf 42)*

- Specify the dollar amount of principal forgiveness and loan assistance each lead service line applicant entity is eligible to receive, as it is included in the table of drinking water infrastructure projects eligible for disadvantaged community principal forgiveness. Without this clarification, the application of the flat 53:47 principal forgiveness ratio applied to the “Estimated LSL Portion of the Project” can only be assumed, and the “Estimated Loan Amount” reflects the overall award without taking into account principal forgiveness.<sup>9</sup>
- Add the following data columns, aligning with the level of detail provided in the “Projects Eligible for Disadvantaged Community Principal Forgiveness” table for continuity and transparency: population, project score, and readiness to proceed score.
- Add the utility’s/municipality’s inventory of lead service lines for each project receiving lead service line replacement funding to provide perspective on the overall lead replacement burden the community is facing, and as an indicator of inventory status (i.e., if technical assistance could be helpful in building the applicant’s inventory).

### *Projects Eligible for Disadvantaged Community Principal Forgiveness (pdf 37)*

- Include dollar amounts of principal forgiveness that projects are eligible to receive instead of referencing the regionalization and emerging contaminant project lists. The dollar amounts of disadvantaged community principal forgiveness projects are eligible to receive should be provided in this table, in addition to providing cross-references to other tables where additional project information may be available within specific categories of projects.

### *Project Priority and Intended Projects List*

- Add project ranking and readiness-to-project scores, for consistency with other tables in Appendix B, and explain how readiness-to-proceed scores are used to determine which projects proceed and which are bypassed. The “Projects Eligible for Disadvantaged Community Principal Forgiveness in PY 2025” table includes and ranks projects by both the project and readiness-to-proceed scores. Most states (for example Illinois<sup>10</sup>) follow this practice, providing project rankings by scores and initial estimates of a funding

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<sup>9</sup> To incorporate data on the amount of principal forgiveness for each project while maintaining a readable font size, space limitations in the table can be addressed by, e.g., combining the Project description column and Loan Type column; eliminating the District Office column and breaking the table into separate district office tables; and/or wrapping the text of longer entity names. Providing data in live spreadsheet format can also enable the individual user to choose which data is most valuable and vary the font size as needed to maintain a legible table.

<sup>10</sup> See Public Water Supply Loan Program 2025 Intended Use Plan (Draft), at pdf 30-49, available at <https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/grants-loans/state-revolving-fund/documents/pwslp-iup-2025.pdf>.

cut-off where funding is expected to be exhausted. Including these rankings can help the public understand which water systems are likely to get funding in any given year, and why (i.e., how Ohio EPA's policy choices produce these funding outcomes). For Ohio, indicating the anticipated funding cut-off line based on project prioritization scores may not be a significant consideration for PY 2025 or future years in which Ohio EPA anticipates sufficient funding for all projects that are ready to proceed, but it may become increasingly important as BIL sunsets and needs increase, leading to unmet project needs in the future. Such rankings can also help demonstrate to other states the degree to which Ohio is able to fulfill priority requests given its overall management of the fund, again going to what other states can learn from Ohio.

- In the Ohio context, currently it is the readiness-to-proceed score, rather than the project prioritization ranking, that determines whether or not a listed project will be funded within the current funding cycle. Therefore, it is important to not only indicate each project's readiness-to-proceed score on each list in Appendix B, but also to explain how this score is used to determine which projects move forward to finalized agreements and which are bypassed. While the readiness-to-proceed criteria, and points accorded to each criterion, are set out on pages 4-5 of the PMP, the PMP does not provide any indication of the score necessary to be considered ready to proceed, or the steps taken to help prioritized projects with an insufficient score to become ready to proceed. Providing more detail not only about how readiness to proceed scores are assessed by also how these scores are used would enable those reviewing the PMP and appended lists to understand which projects are likely to be funded in the current funding cycle and which may require further technical assistance or planning grants. It is particularly important for the public to understand whether some projects are persistently being bypassed year on year due to a failure to meet ready to proceed criteria.

### *All Project Lists*

- Reconcile varying project descriptions across project lists (e.g., project description for Coolville Village reads "Water System Impr," and several line items in the lead service line table list "Lead Service Line Repl."), and include additional descriptive data from the applications, where available, for this round of applicants. Ohio EPA should establish a minimum project description required in application forms for future years, that can be easily extracted and included on project lists. This description should provide an indication of project scope, benefits, and beneficiaries.<sup>11</sup>

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<sup>11</sup> In Illinois, the lead service line projects table includes the number of lines that the applicant proposes to replace with the requested amount of money. *See id.* Such information helps the public understand the relative cost of replacement in various communities, which can in turn help identify communities that are achieving substantial efficiencies and/or those that face exceptionally high per-line costs due to local conditions - information that may ultimately help improve replacement practices and rates over time.

- Provide project list information in exportable, sortable, formats (e.g., Microsoft Excel) as supplemental files attached to the PMP for both current and previously finalized project lists. Ohio EPA currently embeds tables in pdfs, which requires significant cost, time and/or effort to convert into live spreadsheets for data analysis. Provide the current and past years' project lists in live spreadsheet format conversely increases accessibility of data for the public, project applicants, and the public (e.g., user can pick-and-choose data columns of interest and adjust font size as-needed to support readability).

### C. Create a Publicly-Accessible, Interactive Resource for PMP Information.

Noting that creation of such a resource will require work beyond the immediate PMP cycle, and so also fits into Section III of these comments, we request as an additional transparency and accessibility measure that Ohio EPA create a new interactive, web-based resource for providing DWAF data. All project lists in Appendix B should be more accessible to a wider audience for analysis during and after PMP finalization - including geospatial data with, at a minimum, asynchronous access to project priority lists in spreadsheets that the public can access and download for analysis. Michigan provides access to all finalized funding award data in an accessible public dashboard - we encourage Ohio EPA to emulate EGLE's geospatial and project information model, which allows data downloads.<sup>12</sup>

## III. Comments for In-Depth Engagement Over the Coming Year.

While Ohio EPA exercises significant discretion in the annual PMP process under existing rules, and so could in theory make the below changes before finalizing this year's PMP, we recognize that the following changes would entail significant shifts in how Ohio EPA has decided to implement the DWAF. We thus raise these issues for further discussion and implementation in future DWAF years.

### A. Index Percentage Principal Forgiveness to Level of Disadvantage.

As described above, Ohio EPA appears to be applying a flat 53:47 ratio between principal forgiveness and zero-interest loan for lead service line projects. In addition, while the agency considers several factors going to disadvantage, it does so applying single thresholds for each, resulting in communities being either "in" or "out" for each criterion, and so either in or out for

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<sup>12</sup> Available at

<https://www.michigan.gov/egle/Regulatory-Assistance/Grants-and-Financing/Drinking-Water-State-Revolving-Fund> and <https://gis-egle.hub.arcgis.com/datasets/7bfc2a2f2cb14266a59b26d1e8410051/explore?location=44.563969%2C-84.895421%2C7.00&showTable=true>.



disadvantaged community status as a whole.<sup>13</sup> Other Great Lakes states take a different approach, generally tailoring the level of additional subsidies to the level of disadvantage.

For instance, Wisconsin has multiple tiers of disadvantaged community status for lead service line projects, with percentage of principal forgiveness tiered to level of disadvantage; communities that do not qualify as disadvantaged are eligible only for repayable LSLR loans.<sup>14</sup> Michigan has two tiers, distinguishing between “significantly overburdened” and “overburdened” communities and tailoring awards accordingly and, like Wisconsin, does not extend principal forgiveness to communities that do not meet the “overburdened” or “significantly overburdened” criteria.<sup>15</sup> (Illinois also uses a tiering approach for its Clean Water SRF.) These and other states also include additional indicators of disadvantage beyond what Ohio considers. We cite these examples not to endorse any one of them, but to encourage Ohio EPA to further explore and revise its current approach to defining disadvantage and distributing additional subsidies in a manner that would be more consistent with the program’s long-term goal to “target small and disadvantaged community assistance to reduce the financial impact of capital improvements on customers of small systems and systems serving poorer communities.” We look forward to working with the agency, municipal leaders, and water utilities on this topic.

Further examining and revising how the DWAF defines and treats disadvantaged communities also can help Ohio EPA affirmatively demonstrate compliance with Title VI of the Federal Civil Rights, as well as help ensure that recipients of DWAF awards are also complying with Title VI. We encourage Ohio EPA to conduct an equity analysis of the DWAF to these ends and to request additional data from applicants to support such analysis.

#### B. Maximize Set-Asides to Improve the Cost Efficiency of Lead Service Line Projects and Increase the Principal Forgiveness-to-Loan Ratio.

Even with more generous terms than in the past for the lead service line portion of the DWAF, we are concerned that eligible communities are not following through on executing agreements that involve taking on a significant amount of debt, leaving substantial funding on the table instead of deployed to projects protecting public health. This may be showing up in Ohio in two ways. First, some communities with high debt burdens and/or limited financial means may be proposing lead service line replacement projects at an inappropriately small scale relative to their lead burden. Second, other communities might propose projects proportionate to a large lead burden, but decline DWAF awards that do not provide a sufficient level of principal forgiveness

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<sup>13</sup> We note that we generally support Ohio EPA’s use of project boundaries for defining disadvantaged communities, as well as the lack of dollar-amount caps on lead service line awards.

<sup>14</sup> Safe Drinking Water Loan Program Intended Use Plan for the SFY 2024 Funding Cycle 2024, available at [https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/intendedUsePlan/SDWLP\\_SF2024\\_IUP.pdf](https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/intendedUsePlan/SDWLP_SF2024_IUP.pdf).

<sup>15</sup> Drinking Water State Revolving Fund Intended Use Plan - Fiscal Year 2024, available at <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Funding/DWSRF/FY2024-DWSRF-IUP.pdf?rev=07a62ef9d336456cabf28458c4399e95&hash=BFF7CAC7AA499FDC244BEB2923EB2F51>.

to make the project affordable. Either instance may be especially the case for the most disadvantaged communities if in fact they face the flat 53:47 ratio discussed above.

If Ohio EPA is facing challenges finalizing lead service line agreements to use all available lead service line replacement funds, then in addition to indexing level of principal forgiveness to disadvantage, Ohio EPA should consider increasing its use of lead service line replacement set asides to help lead-burdened communities in Ohio update lead service line inventories, reduce per-pipe lead service line replacement costs, train and employ an equitable workforce for lead service line projects, and provide grants for community outreach related to such projects and other non-construction costs. Some of the ways set aside funds could support the training and employment of local residents from underserved communities for the workforce needed for lead service line replacement projects are outlined below.

Increasing the strategic use of lead service line replacement set asides can yield multiple benefits, including improving the cost efficiency of lead service line replacement projects and delivering on workforce goals (taken up in more detail below), while also improving the loan-to-principal forgiveness ratio for lead service line replacement project awards. For these reasons, U.S. EPA has strongly endorsed expansive use of LSLR set asides in its May 2024 memo on Implementing Lead Service Line Replacement Projects Funded by the Drinking Water State Revolving Fund.<sup>16</sup>

Currently, Ohio EPA proposes to set aside 7.33% of its FFY25 lead service line grant under the local capacity development allowance to help small systems develop lead service line inventories. This use of LSLR set aside allowances is what has enabled Ohio EPA to improve the loan-to-principal forgiveness ratio from \$51 loan for every \$49 dollars in principal forgiveness to \$47 loan for every \$53 in principal forgiveness. This is because, while BIL requires states to provide at least 49 percent of LSLR funds as principal forgiveness to state-defined disadvantaged communities, any set asides are taken from the remaining 51 percent which would otherwise be issued as repayable loans.

If Ohio were to set aside the full 31 percent allowed, then instead of a requirement to issue \$47 out of every \$100 in loans in order to issue the remaining \$53 as principal forgiveness, the funds would be issued as follows:

- \$31 of every \$100 would be channeled through set asides to lay the foundation for community-supported, cost-effective, quality-job producing LSLR projects.
- \$49 of every \$100 would be awarded as principal forgiveness or grants.
- \$20 of every \$100 in LSLR funds would be awarded as loans that need to be repaid.

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<sup>16</sup> Available at <https://www.epa.gov/system/files/documents/2024-05/implementing-lead-service-line-replacement-projects-funded-by-the-drinking-water-state-revolving-fund-05-01-2024.pdf>.

Concerns might be raised about reducing the amount of loan funds available to support lead service line replacement construction projects. It is important to remember, however, that funds set aside can be provided as grants to help cover pre-construction costs such as planning, engineering, and community outreach related to lead service line replacement projects as well as for other activities that can make lead service line replacement projects more cost-efficient. As urged by the U.S. EPA in the May 2024 memorandum, Ohio EPA could expand its strategic use of set aside funds to meet a variety of needs related to lead service line inventory and replacement projects.<sup>17</sup> Below we focus on how Ohio could use additional set aside funds to support workforce development goals.

#### C. Extend Lead Service Line Provisions for Disadvantaged Community Status to Other Parts of the DWAF.

We encourage Ohio EPA to extend how it treats disadvantaged communities under the lead service line portion of the DWAF to other parts of the DWAF, and similarly modify disadvantaged community status/definitions to further index level of disadvantage to level of preferable funding as discussed above. In particular, we request that Ohio EPA remove the strict population cap for disadvantaged community status for the general program and allow the boundaries to be defined at the project level. Much like lead service lines, water mains across Ohio communities are in dire need of replacement and are threatening public health and economic activity as they age; in many instances, such main replacement is a necessary precursor to lead service line replacement. Communities thus are likely facing water main project needs that, also like lead service lines, scale to their population size and are often concentrated in the most disadvantaged communities.<sup>18</sup>

#### D. Support the Development of an Equitable Workforce for Water Infrastructure Projects

An equitable water sector workforce is one that represents workers from the community served by the water system, including in particular workers in underserved communities.<sup>19</sup> Prioritizing recruitment of a diverse water workforce is especially important to replenish the water industry, which is currently dominated by older white male workers, a third of whom will be eligible for retirement in the next ten years.<sup>20</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> While we did not comment on PY 2024's Clean Water PMP due to capacity constraints, we note a similar dynamic with respect to stormwater and wastewater collection systems.

<sup>19</sup> "Underserved Communities" is defined as a community with environmental justice concerns and/or vulnerable populations, including minority, low-income, rural, tribal, indigenous, and homeless populations.

<sup>20</sup> US Water Alliance, *Towards a Strong and Equitable Water Workforce* (2024), available at <https://uswateralliance.org/wp-content/uploads/2024/02/Toward-a-Strong-and-Equitable-Water-Workforce.pdf>.

## 1. Adopt Workforce-Related Goals

States have broad discretion over their SRF programs to align programs with the state's unique environmental and socioeconomic needs and goals. To this end, Wisconsin<sup>21</sup> and Indiana<sup>22</sup> are two states that have included workforce-related goals in the Intended Use Plans for their SRF programs. We urge Ohio to likewise include promoting and supporting the development of an equitable workforce for DWAF-funded projects as a program goal.

## 2. Add Workforce-Related Ready-to-Proceed Requirements.

Federal law already includes requirements for the kinds of workers that can be hired for projects funded by SRFs, their wages or other working conditions, and the source of supplies used on SRF-funded projects. Many municipalities also incorporate workforce-related requirements into their public procurement policies, which apply to water infrastructure projects. Some states add further requirements of this nature for SRF-funded projects. Ohio EPA should consider adding workforce-related measures to its readiness-to-proceed requirements, including craft labor requirements and workforce development plans, as described below.

**Craft Labor Requirements for DWAF-funded contracts.** There is a need to ensure that all work on public construction and maintenance is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform such contracts in a timely, reliable and cost-effective manner. Due to the critical impact that skilled craft labor has on the execution of water infrastructure projects, and the increasingly limited availability of such labor, Ohio EPA should make Craft Labor Requirements a condition of eligibility for DWAF funds.

Craft Labor Contracting Requirements require that contractors and subcontractors, at whatever tier, on assisted projects shall, as a condition of performing the work, certify that:

(a) They will pay applicable federal Davis-Bacon wage and benefit rates on the project; and

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<sup>21</sup> Wisconsin's drinking water Intended Use Plan for the State Fiscal Year 2024 funding cycle includes the following short-term goal: "Explore avenues to support pre-apprenticeship, registered apprenticeship, and youth training programs that open pathways to employment." See link at supra note 14.

<sup>22</sup> Indiana's clean water Intended Use Plan for the State Fiscal Year 2024 includes the following long-term goals: "Ensure that the CWSRF Loan Program and its participants comply as required with Disadvantaged Business Enterprise fair share objectives" and "Continue to support the Alliance of Indiana Rural Water (a non-profit organization) with the Indiana Wastewater Certified Operator Apprenticeship Program, which has been approved by the Department of Labor. The Authority supports the wastewater apprenticeship program through state funding programs." See <https://www.in.gov/ifa/srf/files/CWSRF-2024-IUP-Update-5-16-2024.pdf>.

(b) They participate in registered apprenticeship training programs for each craft or trade they employ.<sup>23</sup>

These provisions provide numerous benefits for both government agencies and local communities as they promote successful project delivery by helping to ensure that the craft labor personnel hired for projects have the necessary training and skills required for the work. Such incentivization for DWAF-funded projects promote win-win results for government, taxpayers, workers, and local communities.

**Workforce Development Plans.** Ohio EPA should also add so-called ‘soft’ requirements, such as asking applicants to develop and publish a workforce development plan for DWAF projects, developed in consultation with key stakeholders and made publicly available, to the readiness-to-proceed requirements. Such addition can prompt the implementation of desired workforce measures without requiring strict compliance with specific additional workforce standards. At a minimum, Ohio EPA should add such a requirement for lead service line replacement projects.

Ohio EPA should also provide guidance on what a quality workforce development plan should include, and this guidance should be developed in collaboration with key stakeholders. Set aside funds could be used to support the development of guidance materials through a collaborative process.

Other states have already implemented such measures. For example, a 2023 Minnesota statute establishing a state grant program to supplement SRF funding for LSLR projects requires grant applicants to submit a workforce development plan with their application materials. The plan must include a description of how the applicant will maximize the use of registered apprentices and workers from populations under-represented in the construction industry in the LSLR projects.<sup>24</sup>

3. Use lead service line replacement set-aside funds to support workforce goals.

As discussed above, we are concerned that some of the neediest communities in Ohio may also be reluctant to take on debt for lead service line replacement projects, an issue that Ohio EPA can address in part by maximization of set-asides. Here we discuss workforce development measures

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<sup>23</sup> For purposes of this provision, a registered apprenticeship is a workforce development opportunity in which the employer that offers an apprenticeship is registered with and approved by the U.S. Department of Labor or a state apprenticeship council. In addition, the federal Davis-Bacon and apprenticeship requirements on assisted projects may be waived if the project is fully covered by a Project Labor Agreement approved by the local jurisdiction where the work is being performed.

<sup>24</sup> Minn. Stat. § 446A.077(6) (2024).

that Ohio EPA could use increased set aside funds to implement. We look forward to further discussing how these suggestions could be implemented to support the development and employment of a more equitable water infrastructure workforce in Ohio.

**Community-Based Public-Private Partnerships (CBP3s) or other innovative contracting and procurement methods that include equitable workforce standards.** The

Community-Based Public-Private Partnership (CBP3) approach<sup>25</sup> involves a partnership between the public and private sectors to deliver infrastructure while prioritizing community-based benefits. This approach aims to generate superior results in terms of speed, efficiency, cost-effectiveness, workforce development, and equity. While more commonly deployed for green infrastructure, the CBP3 approach is well-suited for lead service line replacement projects.<sup>26</sup> As an example, in October 2023, the City of Wausau, Wisconsin, announced a pioneering initiative to bring the CBP3 approach to lead service line replacement.<sup>27</sup>

States can play a role in helping communities seeking stronger workforce development or other community co-benefits from water infrastructure investments to consider whether a CBP3 approach might meet their needs and, if so, get them started on first steps. For example, Washington State Department of Ecology recently initiated the Stormwater Community-Based Public-Private Partnership Funding Program.<sup>28</sup> As part of this program, the Department is holding Learning Network workshops, which will lead to a CBP3 working group for Washington State, with the goal of building local capacity for assessing and implementing CBP3 contracting mechanisms.<sup>29</sup> Ohio EPA could undertake similar CBP3 capacity-building efforts using funds set aside from the agency's BIL lead service line replacement grants for technical assistance or local capacity building.

**Regional Partnerships for Workforce Development and Cost-Saving Joint Procurement Efforts.** The promotion of regional collaboration across drinking water systems for capacity building and cost effectiveness is a priority for drinking water SRF programs in many states, including Ohio. Often this entails the consolidation of failing water systems into neighboring systems with stronger technical, managerial, and/or financial capacities.<sup>30</sup> It can also include other kinds of more issue-specific capacity sharing and cost-savings efforts, however, and states

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<sup>25</sup> Originally developed by U.S. EPA over ten years ago, *see* [https://www.epa.gov/sites/default/files/2015-12/documents/gi\\_cb\\_p3\\_guide\\_epa\\_r3\\_final\\_042115\\_508.pdf](https://www.epa.gov/sites/default/files/2015-12/documents/gi_cb_p3_guide_epa_r3_final_042115_508.pdf).

<sup>26</sup> For additional discussion, *see* <https://www.policyinnovation.org/publications/replacingtoxicleadwaterpipesfaster>.

<sup>27</sup> *See* <https://www.wausauwi.gov/Home/Components/News/News/108/15>.

<sup>28</sup> *See* <https://ecology.wa.gov/water-shorelines/water-quality/water-quality-grants-and-loans/community-based-public-private-partnership-program>.

<sup>29</sup> *See* <https://www.policyinnovation.org/blog/didwuul5qdr22a3k6g8bftbqhyf8mm>.

<sup>30</sup> We recognize considerable concern over water affordability and other equity issues in relation to consolidation, and do not take a general position on such a measure here, other than noting the need to center and address these concerns to determine whether/how consolidation is considered.

have used various categories of drinking water SRF set aside funds to support such efforts.<sup>31</sup>

In the lead service line replacement context, regional efforts to understand local workforce capacities and constraints and to combine lead service line replacement needs across near-by small- and medium-sized drinking water systems could achieve significant cost savings.<sup>32</sup> Ohio EPA should dedicate set aside funds to facilitating the development of regional solutions that improve lead service line replacement cost savings and workforce development outcomes. It could do this by using set aside funds to support regional roundtables convening drinking water system staff together with local water infrastructure contractors and local community leaders. These roundtable discussions could explore the readiness and capacity needs of area contractors. With this information, water systems could coordinate their procurement contracts for lead service line replacement projects, perhaps combining their projects into larger, multi-year projects that could be bid to regional contractors, while still arranging for each system to pay for service line replacements in its own system. This could encourage local contractors to build their workforce and other capacities in anticipation of more substantial work opportunities over a series of years.

Regional collaboration on lead service line replacement could be particularly beneficial to small disadvantaged systems, both rural and urban, and Ohio EPA should consider using the 2% set aside allowance for technical assistance to small, otherwise-disadvantaged systems for this purpose.

### **Pre-apprenticeship Programs to Cultivate a More Equitable, Local Water**

**Infrastructure Workforce.** In some regions, the same towns and neighborhoods plagued by large numbers of lead pipes in their drinking water distribution systems also have large numbers of unemployed residents and a lack of accessible, family-supporting jobs. One goal of BIL is to ensure that the same underserved communities subject to the greatest environmental harms from degraded water infrastructure also share in the economic benefits of BIL's substantial investments in water infrastructure. For this to happen, however, there is a need to connect underemployed workers with the quality jobs generated by BIL investments, tailoring workforce development programs to the needs of workers from underserved communities. These often take the form of pre-apprenticeship programs—programs that help workers from underserved communities meet the requirements to enter lucrative apprenticeships and become unionized laborers, plumbers and pipefitters and other kinds of skilled craft laborers needed to construct water infrastructure projects.

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<sup>31</sup> See Drinking Water Revolving Fund Eligibility Handbook, Appendix E, page 65, available at <https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-eligibility-handbook>. See also Analysis of the Use of DWSRF Set-Asides: Capacity Building, page 40, available at [https://www.epa.gov/sites/default/files/2017-10/documents/final\\_dwsrf\\_2017\\_report\\_508compliant.pdf](https://www.epa.gov/sites/default/files/2017-10/documents/final_dwsrf_2017_report_508compliant.pdf).

<sup>32</sup> See *supra* note 26.

Set aside funds can be used to support such programs, and Ohio should consider using set aside funds in this way. For example, Indiana’s drinking water SRF program has used set asides to support the Alliance of Indiana Rural Water’s Indiana Water Treatment Certified Operator Apprenticeship Program. The program provides training for workers from disadvantaged communities for employment as Certified Operators for water systems.<sup>33</sup> Delaware will use set asides from its BIL general supplemental drinking water SRF grant to provide a pre-apprenticeship program aimed at high school students to demonstrate the need for young adults to enter the field of drinking water distribution, operations and water treatment.<sup>34</sup>

**Wage Subsidies for Participants in Pre-Apprenticeship Programs.** The Indiana drinking water SRF program’s support for the Alliance of Indiana Rural Water’s apprenticeship programs includes wage subsidies during the training period. It is important to note that set asides cannot be used to directly provide wage subsidies for apprentices working on SRF-funded projects, given that these costs are eligible to be covered by SRF construction awards. However, Indiana’s example demonstrates that set asides *can* be used to provide wage subsidies for workers participating in workforce development programs as well as the costs of developing and implementing such programs. Ohio EPA should consider supporting pre-apprenticeship programs, and their enrollees, through wage subsidies provided from set aside funds.

**Multi-year Funding for Lead Service Line Replacement Projects.** While distinct from the above measures that entail directly using increased set-aside funds to support workforce development, a policy allowing for multi-year funding of lead service line replacement projects indirectly supports workforce development goals by providing for longer planning and project implementation windows for lead service line replacement projects, in turn allowing for greater funding certainty from year to year, a longer planning window for procuring supplies and contractors (which can result in cost savings), and larger-scale, longer-term projects that create better conditions for investments in apprenticeship and pre-apprenticeship programs. Ohio EPA should clarify that it allows multi-year funding applications and encourage applicants to apply for multi-year funding awards.

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<sup>33</sup> See link at *supra* note 22.

<sup>34</sup> See Delaware Drinking Water State Revolving Fund Intended Use Plan, Final - Revised April 1, 2024, available at <https://www.dhss.delaware.gov/dhss/dph/hsp/files/dwsrfiup2023.pdf>.



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