

August 2, 2024

Texas Water Development Board
P.O. Box 13231
Austin, TX 78711
Via email: DWSRF@TWDB.Texas.gov

RE: DWSRF LSLR IUP Comments

To whom it may concern at the Texas Water Development Board,

This letter provides formal comments on behalf of the undersigned organizations on the Draft SFY 2025 Drinking Water State Revolving Fund Lead Service Line Replacement (DWSRF-LSLR) program. The Texas Water Development Board (TWDB) has undergone immense growth in policy and financial responsibilities over the last decade. The Texas Water Development Board (TWDB) has grown and developed immensely over the past decade to meet new challenges and undertake new responsibilities. This trend is illustrated by the \$2.9 Billion in new federal funds for the Clean Water and Drinking Water State Revolving Funds (CWSRF and DWSRF, or SRFs) available to the TWDB via the Bipartisan Infrastructure Law (BIL) over the remaining two years of BIL appropriations. This Draft Intended Use Plan covers capitalization grant funds allocated to Texas from Federal Fiscal Year 2024 LSLR appropriations, which represent a historic opportunity for projects in disadvantaged areas of the state. 49% of the funds are also required to be utilized as Additional Subsidization, indicating the federal government's recognition of the challenges communities face as they try to mitigate lead service lines in their distribution systems.

With these comments we seek to acknowledge positive changes incorporated into the SFY 2025 Draft DWSRF LSLR IUP, provide recommendations for additional changes that we believe could be incorporated in support of program goals, and outline future policy recommendations that should be considered for incorporation into future IUP's.

We find the following changes encouraging and hope to see them remain in upcoming LSLR IUP's:

- No longer offering dedicated Construction-Ready funds; and
- Providing 25 rating points to projects that include an inventory as part of the project to identify lead service lines, placing them on a level playing field with projects that have already identified lead service lines as part of the water system.

We believe the following recommendations should be considered for implementation in the SFY 2025 LSLR IUP:

I. Add an Initially invited Project List

Although the TWDB has posted the [Project Rating Forms](#) for the LSLR program on its website, it does not provide either an appendix to the IUP or a separate document describing the initially invited project list - a trend that has persisted across all LSLR IUP's released by the TWDB so far. We have seen the same trend in the last two years of LSLR funding as well, meaning we now have three IUPs (including this draft), but no invitation list for any of them. Invitation lists are crucial to understanding how limited LSLR assistance is being utilized, and posting them on the agency website

should be considered a fundamental aspect of the TWDB’s transparency about its use of BIL funds. For all LSLR IUP’s, including those already posted as well as the current draft, we encourage the TWDB to provide an initially invited project list similar to the one posted as part of the DWSRF and CWSRF general program activities IUP’s.

II. Accept Public Comments Submitted Through August 2, 2024

In the email sent by TWDB on July 15, 2024, the stated public comment period was from July 15, 2024 to August 2, 2024 (see **Image 1**, below). However, the Draft DWSRF LSLR IUP for SFY25 states that the public comment period ends on August 1, 2024. We request that the TWDB leave the public comment period open until August 2, 2024 to accommodate commenters unaware of the earlier deadline.

Clean Water & Drinking Water State Revolving Funds and Lead Service Line Replacement Program SFY 2025 Draft Intended Use Plans

The Texas Water Development Board (TWDB) is holding a period of public review and comment before approving and adopting the draft State Fiscal Year (SFY) 2025 State Revolving Fund (SRF) Intended Use Plans (IUPs).

Three intended use plans are covered in this public comment period:

- SFY 2025 Clean Water State Revolving Fund General Activities [Draft SFY 2025 Clean Water SRF \(CWSRF\) IUP](#) and [2025 CWSRF Project Rating Report](#)
- SFY 2025 Drinking Water State Revolving Fund General Activities [Draft SFY 2025 Drinking Water SRF \(DWSRF\) IUP](#) and [2025 DWSRF Project Rating Report](#)
- SFY 2025 Drinking Water SRF Lead Service Line Replacement (LSLR) Program. [Draft SFY 2025 DWSRF LSLR IUP](#) and [2025 DWSRF LSLR Project Rating Report](#)

The period of public review and comment
begins Monday, July 15, and ends Friday, August 2, at 5:00 p.m. CDT.

Image 1: Email from TWDB on DWSRF LSLR Public Comment Period

III. Use Set-asides for LSLR Inventories or Reserve the Right to Use Unused Portions of the Set-asides at a Later Date for Approved Set-aside Uses

The EPA has urged states to use LSLR set-aside funds to complete LSL inventories, and the Lead and Copper Rule Revisions require that all water systems complete LSL inventories by October 16, 2024. Applicants who have completed their inventories have an advantage under the draft IUP, since entities that have identified lead service lines as part of their system get 25 project rating points.

However, states can use set-asides for technical assistance to local water systems to help them identify LSL’s. In fact, federal regulations allow states to set aside up to 31% of the capitalization grant funds for purposes other than financing construction projects for water systems. Texas is currently only utilizing 3.91% of its set-asides under this program, with none of it being spent on LSLR inventories.

We strongly recommend that Texas utilize the remainder of the set-asides under this program to aggressively provide technical assistance to communities to help with LSLR inventories. This change would result in communities not needing to repay the set-aside funds and LSLR construction projects

would be able to receive a more attractive loan-to-principal forgiveness ratio. Instead of providing \$49 in principal forgiveness for every \$51 loaned, \$49 in principal forgiveness can be issued for every \$20 loaned, with the remaining \$31 as set asides for inventories and other activities that could lead to more cost-efficient LSLR projects.¹

Further, even if set-asides are not utilized under this IUP year, we encourage the TWDB to reserve the right to utilize the maximum amount of set-asides from this allotment for use in future IUP years. A state may reserve set-aside funds from a capitalization grant and expend them over a period of time, provided that the state identifies the reserved amount in its Intended Use Plan (IUP) and describes the use of the funds in workplans for EPA approval.² Except for the local assistance and other state programs set-aside, a state may reserve the authority to take set-aside funds from future capitalization grants if those funds were not included in prior or current years' workplans.³ The amount of reserved funds that a state may take in a future year is limited by the unused set-aside funds in the capitalization grant of the past year in which the state reserved the funds. Not only will reserving the right for TWDB to utilize funds that help communities with no-cost technical assistance, but can also help the TWDB in spending down LSLR funds, if it is having difficulties finding communities willing to take on loan financing for lead projects.

Acknowledging the short two-week public comment period for the draft IUP, we hope to find opportunities to discuss and develop the following recommendations for consideration in upcoming LSLR IUPs:

IV. Revise Disadvantaged Community Policies

Under the Texas DWSRF LSLR IUP, only projects that meet the disadvantaged community requirements are eligible for funding. Therefore, disadvantaged status is a major driver for communities to apply for funding under the LSLR DWSRF program. The following recommendations will help refine disadvantaged community policies under the LSLR program to help ensure areas most in need are prioritized for principal forgiveness.

a. Expand Eligible Entities to All Communities Not Just DACs

While all principal forgiveness under the LSLR program must be provided to DACs, it is not the case that only DACs are eligible for LSLR financing under the program. In Texas however, the strategy of the TWDB has been to only allow DACs to apply for and receive funding under the LSLR program⁴ and providing the same proportion of loans and principal forgiveness to all projects.⁵ The TWDB has balanced this with having a very broad definition of DAC under the LSLR program. As will be

¹ EPIC, Janet Pritchard, State SRF Policies to help Communities Fully Take Up the new Federal Funding for Lead Service Line Replacement (January 2023). Available at: <https://www.policyinnovation.org/blog/setasidefunds>.

² See 40 CFR 35.3540(d).

³ *Id.*

⁴ See page 10 on SFY25 LSLR IUP (describing funding options available under the IUP and stating that only entities with projects that meet the disadvantaged criteria and are listed on the Project Priority Lists (PPLs) may be invited to apply for funding options.

⁵ See page 9 on SFY25 LSLR IUP (stating that all financing will be made at the ratio of 51 percent principal forgiveness and 49 percent loan/bond, including the financed loan origination fee).

discussed in **sub-section b**, below, we encourage the TWDB to have a more narrow definition of DAC so that principal forgiveness is prioritized for communities that are unable to take on loan financing. However, we also encourage the TWDB to expand the eligible communities that are able to apply for LSLR financing under this program to address lead issues in their communities. This will hopefully allow the TWDB to find additional communities that are able to take on loan financing to get LSLR funds out the door. It will also hopefully allow the board to increase the amount of principal forgiveness available per project, based on the level of disadvantage a community faces (as will be discussed in **sub-section c**, below).

b. Set-aside 50% of Funding for More Disadvantaged Communities

Under the draft IUP, an entity is considered an eligible disadvantaged community if it:

- 1) *may have lead service lines within the distribution system, and*
- 2) *51 percent or more of the proposed project beneficiary area based on household connections has an Annual Median Household Income (AMHI) level that does not exceed 150 percent of the state's AMHI level. The state AMHI from the U.S. Census 2017-2021 American Community Survey (ACS) 5-year estimate is \$67,321; therefore the AMHI of the proposed project beneficiary area must not exceed \$100,982.*

Using the new [Texas Community Water System Prioritization Tool](#) developed by EPIC, we identified 659 water systems (out of 4616 total systems) in Texas that had an AMHI over \$100,982. We estimate this would exclude less than 14% of cities from accessing principal forgiveness, meaning that more than 85% of all cities in Texas would qualify as disadvantaged communities under this definition. Moreover, none of the PIFs submitted were determined to be ineligible due to not meeting disadvantaged criteria.

While we understand the need to disburse funds under this new program in a timely manner, we believe a greater focus is warranted on the areas considered disadvantaged under more reasonable circumstances. Since the current definition is so broad, we are concerned that dis- and under-invested vulnerable areas may continue to lose out on funding for LSLR replacement. Therefore, we suggest setting aside at least 50% of funds for areas that meet a more strict disadvantaged community standard – for example, 75% of the area's AMHI as used in other TWDB programs. According to the prioritization tool, this would make 1,022 of the 4,539 water systems analyzed eligible for this separate distribution of funding.

c. Increase the Amount of Principal Forgiveness for More Disadvantaged Communities, Up to 100%

In addition to narrowing the definition of disadvantaged communities, the TWDB should provide principal forgiveness on a sliding scale based on a community's level of disadvantage. Currently, an eligible entity with an AMHI of \$100,000 will receive the same financing (51% principal forgiveness, 49% loan) as a community whose AMHI is \$30,000. This will likely result in affordability and repayment issues preventing the most disadvantaged communities in the state from accessing these funds.

While we recognize the need to replace *all* lead service lines, we believe that the principal forgiveness should be prioritized in areas most unable to pay for replacement. We therefore recommend implementing a sliding scale approach, where areas of higher disadvantage are eligible for larger percentages of principal forgiveness.

A disadvantaged community should not be turned away from one-time funding opportunities for projects so directly connected to public health if they are unable to repay loans. Without any possibility of 100% principal forgiveness, we are concerned that the most under-resourced communities will continue to not be able to invest in necessary lead service line replacement programs. To address this, we recommend that the TWDB prioritize principal forgiveness based on level of disadvantage, with the highest amount of principal forgiveness (up to 100%) reserved for the most disadvantaged communities.

V. Improving Project Rating Criteria

Project prioritization is a key policy choice that impacts which communities will receive funding. We are encouraged to see the TWDB use AMHI as a factor to award points on a sliding scale. Instead of providing flat project rating points for all projects that have a certain AMHI, this method aims to prioritize areas that are most disadvantaged over other communities that may be more able to pay for LSLR projects. While we appreciate this criterion, the following recommendations aim to further prioritize projects that result in rapid LSLR and ones that are aimed at supporting projects in areas with vulnerable populations.

a. Incentivize Rapid Replacement of LSLR Through Rating Criteria Awarding Points on a Sliding Scale

We recommend that instead of providing 25 points to projects that have identified lead project service lines, the project rating formula should incentivize projects that would deliver rapid replacement. For example, the TWDB could provide 25 points to projects that ensure 100% line replacement within x number of years. For larger systems where 100% replacement may not be feasible within a quick time frame, 25 points could be eligible for projects that ensure x number of lines (minimum 500) or x% (e.g., 10%), whichever is larger, of the system's LSLs are replaced per year. We recommend that points be provided on a sliding scale, providing more points to projects that ensure the quickest line replacement. Incentives like these can be seen at work in LSLR IUP's from other states, including Wisconsin.

b. Add Rating Criteria Aimed at Prioritizing Projects in Vulnerable Subpopulations, Including Percent of Children Under 5 Years of Age

We appreciate the TWDB's rating criteria for AMHI, but additional project rating criteria can help ensure equitable distribution of funds under this program. There are numerous subpopulations that are particularly vulnerable to lead exposure. Unfortunately, some of the characteristics of subpopulations are not systematically quantified through for example, American Community Survey data. For example, the CDC has identified pregnant parents and immigrant and refugee children from less developed countries as particularly vulnerable subpopulations. Gathering statewide data on these subpopulations may be difficult and potentially problematic. However, as discussed in the introduction, the need to replace lead service lines is urgent, as lead is a neurotoxin that can damage the brain and cause lifelong developmental and behavioral problems in children.

According to the CDC, children less than six years old are at a higher risk of lead exposure.⁶ Luckily, the ACS collects data on percent of persons under 5 years of age. Using the [Texas Community Water System Prioritization Tool](#), for the water systems analyzed, the average percent of children under the age of 5 is 6.3%. We therefore recommend prioritizing communities with greater than average

⁶ CDC, Lead Poisoning Prevention, Children. Available at: <https://www.cdc.gov/nceh/lead/prevention/children.htm#:~:text=Children%20under%20the%20age%20of,they%20are%20growing%20so%20rapidly.>

populations of children under 5 years of age, to better target communities most at risk. Additional rating criteria aiming at prioritizing projects in other vulnerable communities should also be considered.

The undersigned groups appreciate and are encouraged by the TWDB's progress made under this draft IUP. We hope these recommendations provided above are taken into consideration and look forward to any future discussions with the board to help operationalize these recommendations.

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