



**Clean Water and Drinking Water State Revolving Fund Programs:  
Federal Fiscal Year 2024 Intended Use Plans  
Comment and Response Document**

## INTRODUCTION

On May 18, 2024, the Pennsylvania Infrastructure Investment Authority (PENNVEST) and the Pennsylvania Department of Environmental Protection (DEP) published notice in the *Pennsylvania Bulletin* [54 Pa.B. 2729] of the availability for public comment on the Clean Water and Drinking Water State Revolving Fund Programs Intended Use Plans (IUPs) for Federal Fiscal Year (FFY) 2024. These IUPs demonstrate the Commonwealth's plan to utilize the State Revolving Funds (SRFs) and include detailed information that illustrates the intended implementation for the SRF program in the Commonwealth. These IUPs include a list of drinking water, wastewater, nonpoint source, and pollution abatement projects to be considered for a design and engineering or construction loan or grant from funds the Commonwealth expects to receive from the United States Environmental Protection Agency (EPA) through the Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs for FFY 2024. The DWSRF program includes the Base Grant funds as well as supplement grant funds made available through the FFY 2024 Federal appropriation, under the Federal Safe Drinking Water Act (42 U.S.C. §§ 300f—300j-27) including appropriate State match funds and principal, interest, and investment income. In addition, the IUP also applies to the FFY 2024 Bipartisan Infrastructure Law (BIL) Grants—General Supplemental, Lead Service Line Replacement and Emerging Contaminants and the appropriate state match funds. The CWSRF program includes the Base Grant funds as well as supplement grant funds made available through the FFY 2024 Federal appropriation under Title VI of the Water Quality Act of 1987 (33 U.S.C. §§ 1251—1389) including appropriate State match funds and principal, interest, and investment income. In addition, the IUP also applies to the FFY 2024 BIL Grants - General Supplemental and Emerging Contaminants and the appropriate State match funds.

The projects to be considered for a loan or grant from the DWSRF and CWSRF programs must meet the federal requirements for funding in accordance with the Federal Safe Drinking Water Act and the Federal Clean Water Act. Accordingly, the projects included in the IUPs are expected to meet the requirements applicable to the use of the DWSRF and CWSRF loan or grant funds. A project must appear on a PENNVEST-approved IUP before funding can be approved by the Commonwealth's SRF programs. Projects listed in the FFY 2024 IUPs are on the Commonwealth's Project Priority Lists (PPL) and are expected to proceed with design and engineering or construction within the next two years. A project's readiness to proceed and the reasonable availability of alternative funds also impact project selection for the IUPs. Consequently, the rank ordered list of projects on each PPL does not solely dictate the order in which projects will be chosen for inclusion in an IUP.

The DWSRF will be capitalized with an approximated maximum of \$276 million in federal funds (\$268 million for FFY 2024 and \$7.9M from FFY 2022 reallocations) and \$18.2 million of State match funds. Approximately \$20.7 million of these funds will be set aside for technical assistance to small systems, operator training and certification, and source water assessment and protection, as authorized under the Federal Safe Drinking Water Act. The DWSRF IUP also includes a narrative work plan that describes how these set-aside funds will be used. PENNVEST is also allocating approximately \$3.6 million for administrative purposes. Finally, approximately \$144.4 million will be set aside as additional subsidy for primarily disadvantaged communities. The FFY 2024 DWSRF grant does not have a requirement to set aside funding for green infrastructure projects. However, the Commonwealth will continue to promote green infrastructure projects that meet the EPA criteria for green infrastructure and can fall into one or more of the following four categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

The CWSRF will be capitalized with an approximated maximum of \$131 million in federal funds and approximately \$24.4 million in State match funds. Approximately \$1 million will be set aside for the On-lot Sewage Disposal Program. An approximated maximum of \$59.1 million will be set aside for additional

subsidy for primarily disadvantaged communities. Finally, a goal has been set to identify a minimum of \$13 million of green infrastructure projects that meet the EPA criteria for green infrastructure and can fall into one or more of four categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

A 30-day comment period was provided on the FFY 2024 CWSRF and DWSRF IUPs, and interested parties were directed to submit comments using the Department's online eComment tool at <https://www.ahs.dep.pa.gov/eComment/> or by e-mail to [ecomment@pa.gov](mailto:ecomment@pa.gov). The comment period ended on June 17, 2024.

DEP and PENNVEST received comments and questions from different individuals and organizations during the comment period. The purpose of this document is to present DEP's and PENNVEST's responses to these comments and to explain how the comments were considered in finalizing the CWSRF and DWSRF IUPs.

The names and, where available, addresses of individuals who submitted comments are identified in Attachment A, in no particular order. This document presents each comment received and identifies the commenter(s) by number in parentheses, corresponding to the list in Attachment A. Copies of all comments received during the public comment period are posted on the Department's eComment website at <https://www.ahs.dep.pa.gov/eComment/>.

## COMMENTS AND RESPONSES

### **Comments received on CWSRF and DWSRF IUPs**

- 1. Comment:** "Because of the capital intensity of water and wastewater systems, and the necessary decrease in rates resulting from spreading capital investment over more customers, larger systems should be encouraged, not punished. These systems provide safe and reliable services for millions of Pennsylvanians, many of whom live in economically distressed communities and are themselves economically distressed, and who end up facing increased rates in part because PENNVEST provides their water systems with fewer opportunities to compete for grant dollars. Moreover, the PENNVEST policy creates an unequal system between larger and smaller systems with the larger being required to borrow and pay back money with interest for needed funds while others are provided with free dollars even though all have the need for capital investment. PENNVEST should authorize the segmentation of systems according to the geographic location of individual communities and their respective projects. This would enable the allocation of grant funding for non-lead projects aimed at enhancing overall system improvements, such as upgrades to water treatment plants and storage facilities. Specifically, funding could be directed to the portion of the project that directly benefits economically distressed communities."  
(12)

**Response:** The intention of the affordability analysis is not to punish large systems or provide an incentive for smaller systems. The affordability analysis provides an object measure of affordability as it measures the ability of the applicant to move forward with a project based on comparison of the resulting residential user rate to what is considered an affordable residential user rate. The PENNVEST affordability analysis determines whether an applicant is "disadvantaged" for purposes of determining project funding. The core of the PENNVEST affordability analysis looks at the system-wide residential user rate to determine if the applicant is "disadvantaged." If an applicant is deemed "disadvantaged," it becomes eligible for hardship funding, which may include an extended term, a lower interest rate or grant or principal forgiveness loan funds. The primary goal of the PENNVEST hardship funding program is to provide an incentive to disadvantaged communities to construct critical infrastructure projects that would not otherwise occur in the absence of the additional incentives, consistent with Section 10(e) of the

Pennsylvania Infrastructure Investment Authority Act (35 P.S. § 751.10(e)). In addition, the definition of “disadvantaged” communities under the CWSRF IUP and DWSRF IUP is reviewed and approved by the United States Environmental Protection Agency, consistent with the requirements and goals of the State Revolving Fund programs.

- 2. Comment:** “PENNVEST should continue promoting grant funding to meet the levels set forth in the BIL which seeks to distribute 49% of all funding in the form of grants. PENNVEST should also consider including grant funding in multi-year funding requests.” (12)

**Response:** The grant terms and conditions for the CWSRF – BIL General Supplemental, the DWSRF – BIL General Supplemental, and the DWSRF Lead Service Line Replacement grants include the 49% additional subsidization requirement. PENNVEST is meeting this requirement. PENNVEST promotes the availability of all its funding in multiple in-person events and virtual events throughout the year. Scheduling for such events is posted on the PENNVEST website.

Programmatic financing is available when multiple projects are implemented over a series of years under one funding agreement. PENNVEST does not give consideration for grants or principal forgiveness funding under the Programmatic Financing Program because the projects are dynamic with no guarantee they will all be implemented within the time limits of the program. As a result, it would not be prudent to tie up grant and principal forgiveness dollars on projects that may or may not get implemented within the timeline of the program. Projects can still come in on an individual basis for consideration of grant and principal forgiveness dollars.

- 3. Comment:** “PENNVEST should consider allowing Programmatic Financing (Pro-Fi) projects to be eligible for grants or principal forgiveness awards. The current requirement of awarding grants to projects submitted under the traditional PENNVEST funding program is not aligned with the benefits of the Pro-Fi program.” (12)

**Response:** Programmatic financing is available when multiple projects are implemented over a series of years under one funding agreement. PENNVEST does not give consideration for grant and principal forgiveness funding under the Programmatic Financing Program because the projects are dynamic with no guarantee they will all be implemented within the time limits of the program. As a result, it would not be prudent to tie up grant and principal forgiveness dollars on projects that may or may not get implemented within the timeline of the program. Projects can still come in on an individual basis for consideration of grant and principal forgiveness dollars.

### **Comments received on DWSRF IUP**

- 4. Comment:** “Fulfill Justice40 requirements by recognizing and addressing environmental justice in DWSRF. Utilize the improved PennEnviroScreen Tool to incorporate pollution and health criteria into the definition of ‘disadvantaged community’ to ensure the most impacted communities can afford and access clean water.” As expressed by one commenter, while the mapping tool used by DEP considers minority populations and federal poverty levels as indicators used to identify EJ areas and prioritizes them for outreach for the DWSRF, these areas “should also be considered as disadvantaged communities and prioritized for technical assistance. Additionally, the U.S. EPA’s EJSCREEN map contains EJ Index indicators that would strengthen Pennsylvania’s map to consider existing environmental inequities.” (1, 2, 3, 4, 5, 6, 7, 8, 11)

**Response:** Justice40 communities have been defined by the United States Environmental Protection Agency (EPA) as those communities that are deemed “disadvantaged” under the States’ affordability

analysis. PENNVEST’s affordability analysis already meets and exceeds the Justice40 goals set by EPA. Since the inception of the program, 46% of all PENNVEST loan dollars and 43% of all PENNVEST principal forgiveness dollars have gone to Justice40 communities. In the ’22-’23 Fiscal Year, 85% of loan dollars and 66% of grant dollars went to Justice40 communities (PENNVEST funded projects in Justice40 communities can be accessed on the PENNVEST website under “Approved Projects”).

Despite the fact that PENNVEST is already in compliance with EPA’s Justice40 goals, PENNVEST has decreased the requirements of the affordability analysis from 1.5% of median household income to 0.5% and 1.25% of median household income in an effort to make more communities qualify as disadvantaged communities, which in turn will increase dollars going to Justice40 communities.

For the purpose of defining technical assistance eligibility, disadvantaged communities are those Environmental Justice (EJ) communities that are defined as: DEP-identified EJ Areas (see <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx>), as well as the areas defined by the White House Council on Environmental Quality (CEQ) and the CEQ’s Climate and Economic Justice Screening Tool (see <https://screeningtool.geoplatform.gov/en>).

PENNVEST’s technical assistance contractor, DEP’s existing and new technical assistance staff, and EPA’s partnership with states to establish stand up technical assistance hubs will also play a significant role in helping small, rural, and disadvantaged communities better understand the project development, implementation, and funding process.

5. **Comment:** “Remove investor owned utilities as eligible to receive DWSRF funds. Investor owned utilities (IOU) are different from public utilities as they are for-profit entities and are more likely to have unaffordable rates. Thus, when IOUs are able to receive state revolving funds it is important to have affordability measures in place, which Pennsylvania’s DWSRF fails to do. Pennsylvania has given more money to IOUs through the DWSRF than most states, yet customers of private water companies continue to have unaffordable water rates.” (1, 2, 3, 4, 5, 6, 7, 8, 11)

**Response:** The *DWSRF Handbook* identifies eligible borrowers as: “(1) Existing privately-owned and publicly-owned community water systems and non-profit non-community water systems, including systems utilizing point of entry or residential central treatment...; (2) New community water systems that represent cost-effective solutions to existing public health problems with serious risks...”

Where user rates exist, the same affordability analysis is used for public utilities and investor-owned utilities. This allows PENNVEST to compare existing user rates to the combination of socio-economic factors that determine what users in that community can afford to pay, thereby creating an even playing field for all users across the Commonwealth, whether they are served by a public utility or a private investor-owned utility. In addition, rate increases by investor-owned utilities require Public Utility Commission (PUC) approval.

6. **Comment:** “Increase the transparency of the DWSRF application and PENNVEST process. Much of the current disadvantaged communities designation is unclear to applicants and observers. Explicitly list the indicators, points, and calculations used to make this designation. Additionally, include what percentage of the funds are going to advantaged communities in the form of principal forgiveness and label which projects in the priority list are disadvantaged communities.” Moreover, as expressed by one commenter, “the financial capability analysis PENNVEST uses to define a disadvantaged community does not allow a community to understand before they take on the extreme effort of applying to the DWSRF if they will be eligible to receive grant funding... and recommend proactively engaging community and

environmental organizations well in advance of future Intended Use Plan releases or new rulemaking.” (1, 2, 3, 4, 5, 6, 7, 8, 11)

**Response:** Both IUPs contain sections which explain how the term “disadvantaged” is defined and utilized within the funding programs by both DEP and PENNVEST. PENNVEST’s project affordability analysis measures whether or not a project results in an applicant being considered “disadvantaged” for the purpose of project funding based on comparison of the resulting residential user rate to what is considered an affordable residential user rate. As each applicant is required to complete a planning consultation, that is often the first opportunity for communities to better understand the financial capacity analysis and how their project/community would be impacted with PENNVEST funding. Hardship funding is made available to those systems whose affordability analysis shows that project affordability is a concern as determined by the system-wide residential user rate. In these cases, the project applicants are considered disadvantaged. Hardship funding may include an extended term, a lower interest rate or grant or principal forgiveness loan funds. The goal of the program is to provide incentives that can be used to enable infrastructure projects in disadvantaged communities that otherwise would not occur. In situations where a disadvantaged area is part of a larger system and the disadvantaged area has an identifiable census tract that is coincident with that area’s demographics, the financial capacity analysis can be performed considering households within that tract. PENNVEST’s technical assistance contractor, DEP’s existing and new technical assistance staff, and EPA’s partnership with states to establish stand up technical assistance hubs will also play a significant role in helping small, rural, and disadvantaged communities better understand the project development, implementation, and funding process. For the purpose of defining technical assistance eligibility, disadvantaged communities are those Environmental Justice (EJ) communities which are defined as (1) DEP-identified EJ Areas: <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx>; (2) federally defined areas identified by the White House Council on Environmental Quality (CEQ). These areas can be found using the CEQ’s Climate and Economic Justice Screening Tool: <https://screeningtool.geoplatform.gov/en/>. Additionally, by definition, only disadvantaged communities are eligible to receive principal forgiveness. As a result, any project receiving principal forgiveness is a disadvantaged community.

7. **Comment:** “Award project scoring points for disadvantaged community status to support prioritization for funds. These points would be in addition to the distressed and financial capability analysis scoring, as there are important aspects of environmental justice communities that are not simply financial.” As one group indicated, “this priority rating should include clear point values associated with known environmental justice issues.” (1, 2, 3, 4, 5, 6, 7, 8, 11)

**Response:** DEP added five (5) points for EJ communities to the Drinking Water Environmental Priority Ranking system and the PENNVEST Board approved the revision on April 24, 2024. Additionally, there are other ways that DEP and PENNVEST support needs of communities beyond a community’s financial need. Technical, financial, and managerial assistance is provided through the Drinking Water Set-aside programs and ongoing technical assistance to wastewater and drinking water systems. These programs holistically support systems that may have technical, financial, and managerial challenges. These programs help with day-to-day operations of systems, they help to identify capital needs and begin the process to plan for ultimately designing system upgrades, and they provide tools to help system managers make sound financial and managerial decisions.

8. **Comment:** “Replace weak criteria to identify Disadvantaged Communities. Median Annual Household Income (MAHI) is a poor statistic to identify low-income populations that state revolving funds should target because MAHI is easily influenced by some residents with higher incomes. Instead, DWSRF

criteria should consider the percentage of a community's population that falls below 200% of the federal poverty level.” (1, 2, 3, 4, 5, 6, 7, 8, 11)

**Response:** Median household income alone is not used to identify low-income populations. This is adjusted factoring changes in the Consumer Price Index to calculate adjusted MAHI. It is utilized as a measure in conjunction with other socio-economic factors that are provided by Pennsylvania Department of Community and Economic Development, including the percentage of the population over age 64, the percentage of the population below the poverty rate, and the rate of population change in the community between census data collection to determine a community’s ability to pay for a project.

9. **Comment:** “Remove prioritization of consolidation and regionalization projects and add protections for the rights of local people. Without protections, these processes can result in loss of revenue, property, and local decision making power.” One commenter expressed “not only should these projects not receive higher points in the scoring system, but safeguards must be put in place to protect local oversight, governance, and ownership of assets. For systems with existing community governance (municipal and other systems), consolidation points should be awarded only if all communities that will have a system shuttered have held a resident vote (referendum) indicating their approval to consolidate their system, resulting in a system being shuttered.” (1, 2, 3, 4, 5, 6, 7, 8, 11)

**Response:** There are benefits to consolidation and regionalization of systems including economies of scale, bulk purchasing advantages, spreading the debt service over a larger customer base and enhanced technical and managerial capability in some cases. In our experience working with regionalization efforts, local officials can continue to play a strong role in the decision-making process. Ultimately, however, the decision to regionalize remains with the community and is not mandated or required by PENNVEST.

10. **Comment:** “The Pennsylvania DEP must adjust the Disadvantaged Communities designation to Recognize Environmental Justice. The PENNVEST financial capability assessment used to designate eligibility for additional subsidy is biased to direct funding to small to mid-sized water systems where population is low and the cost per capita of infrastructure upgrades is high. It is poorly suited to direct subsidy toward large urban systems where the needed upgrades have been deferred for complex regulatory and affordability reasons. The system, which relies heavily on Median Household Income as an indicator, does not account for the overlapping vulnerabilities of race, poverty, and cumulative environmental impacts... We urge PENNVEST to incorporate cumulative environmental impacts and Environmental Justice status into the affordability analysis.” (11)

**Response:** PENNVEST affordability analysis provides an object measure of affordability as it measures the ability of the applicant to move forward with a project based on comparison of the resulting residential user rate to what is considered an affordable residential user rate. The affordability analysis determines whether an applicant is “disadvantaged” for purposes of determining project funding. The core of the affordability analysis looks at the system-wide residential user rate to determine if the applicant is “disadvantaged.” An applicant deemed “disadvantaged” becomes eligible for hardship funding, which may include an extended term, a lower interest rate, or grant or principal forgiveness loan funds.

In addition, Justice40 communities are defined by the United States Environmental Protection Agency (EPA) as those communities deemed “disadvantaged” under the States’ affordability analysis or Environmental Justice (EJ) communities that are defined as: DEP-identified EJ Areas (see <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx>), as well as the areas defined by the White House Council on Environmental Quality (CEQ) and the CEQ’s Climate and Economic Justice Screening Tool (see <https://screeningtool.geoplatform.gov/en>). PENNVEST’s affordability analysis already meets and

exceeds the Justice40 goals set by EPA. Since the inception of the program, 46% of all PENNVEST loan dollars and 43% of all PENNVEST principal forgiveness dollars have gone to Justice40 communities. In the '22-'23 Fiscal Year, 85% of loan dollars and 66% of grant dollars went to Justice40 communities (see PENNVEST funded projects in Justice40 communities can be accessed on the PENNVEST website under "Approved Projects").

Despite compliance with EPA's Justice40 goals, PENNVEST has decreased the requirements of the affordability analysis from 1.5% of median household income to 0.5% and 1.25% of median household income in an effort to make more communities qualify as disadvantage communities, which in turn will increase dollars going to Justice40 communities. Furthermore, median household income alone is not used to identify low-income populations. This is adjusted factoring for changes in the Consumer Price Index to calculate adjusted MAHI. It is utilized as a measure in conjunction with other socio-economic factors that are provided by Pennsylvania Department of Community and Economic Development, including the percentage of the population over age 64, the percentage of the population below the poverty rate, and the rate of population changes in the community between census data collection to determine a community's ability to pay for a project.

**11. Comment:** "Prioritize Combined Sewer Overflow (CSO) projects in Environmental Justice communities... PENNVEST's current policies, especially the affordability and financial capacity criteria, are not working to direct BIL funding toward Pennsylvania's biggest combined sewer overflow problems in an equitable manner. For each year of BIL implementation, dedicate a portion of the BIL supplemental funding as immediate principal forgiveness on loans, or loan refinancing, to the environmental justice communities with the largest CSO abatement needs." (11)

**Response:** The BIL is clear in its direction on the use of principal forgiveness loan funds, and PENNVEST is required to comply with the terms and conditions of the various Capitalization Grants under which the funds are awarded to Pennsylvania. PENNVEST does not have the discretion to establish its own priorities for the use of BIL funds. Moreover, Justice40 communities are defined by the United States Environmental Protection Agency (EPA) as those communities deemed "disadvantaged" under the States' affordability analysis. To the extent Justice40 communities apply for project funding, PENNVEST will award principal forgiveness loan funds, as permitted under BIL and the applicable Capitalization Grant. Additionally, projects addressing combined sewer overflows and sanitary sewer overflows get additional ranking points under existing ranking criteria. It should be noted that PENNVEST has funded every project that is technically and administratively approved since 2015. It's up to the communities with combined sewer overflows and sanitary sewer overflows to develop the projects then submit applications to access the funding.

### **Comments received on CWSRF IUP**

**12. Comment:** "PENNVEST's financial capability analysis relies heavily on Median Household Income (MHI) as an indicator of an affordable rate, and this in turn determines which communities will receive additional subsidy. The result of this policy is that small, rural water systems are able to receive additional subsidy, while large urban water systems often are not despite significant localized impacts of unaffordable water service, aging infrastructure, and wastewater and stormwater pollution..." Given the affordability assessment located in the IUP on pages 12 and 13, it is recommended to "revise the affordability assessment methodology to offer additional means of evaluation beyond the MHI-based 'target percentage' factor which currently drives the analysis" by first considering the following possibilities: "alternative system-wide affordability assessment factors such as lowest quintile income



and percent living under 200% of the poverty level; options for evaluation of census-tract or block level affordability based on the location of the proposed project and expected localized benefits such as pipes repaired or green stormwater systems installed; and including all PA-mapped Environmental Justice communities as eligible for additional subsidy and principal forgiveness for all phases of the proposed project.” The second recommendation seeks a glossary of terms within Section C (‘Determination of Financing Rates’ beginning on page 12), to include the terms financial capability assessment, financial capability analysis, financial capability model, affordability methodology, grant, and principal forgiveness. The third recommendation suggests eliminating the constraining language in the IUP on page 14 stating “No grant or principal forgiveness loan funds will be invested into a project if the resulting user rate reduction is less than \$15 on an annual basis” as it prevents BIL subsidy from reaching large water systems. “PENNVEST is limited by statute in how it can award grants, and has also chosen to apply this limit to how principal forgiveness is treated within loans. Grants and principal forgiveness loans are not the same: grants are not offered anywhere in the IUP; and if offered would carry greater federal requirements than principal forgiveness loans. This is well within the authority of PENNVEST and DEP to change.” (10)

**Response:** PENNVEST’s affordability analysis provides an object measure of affordability as it measures the ability of the applicant to move forward with a project based on comparison of the resulting residential user rate to what is considered an affordable residential user rate for the system regardless of its size. The PENNVEST affordability analysis determines whether an applicant is “disadvantaged” for purposes of determining project funding. The core of the PENNVEST affordability analysis looks at the system-wide residential user rate to determine if the applicant is “disadvantaged.” In situations where a disadvantaged area is part of a larger system and the disadvantaged area has an identifiable census tract that is coincident with that area’s demographics, the financial capacity analysis can be performed considering households within that tract. If an applicant is deemed “disadvantaged,” it becomes eligible for hardship funding, which may include an extended term, a lower interest rate or grant or principal forgiveness loan funds. The primary goal of the PENNVEST hardship funding program is to provide an incentive to disadvantaged communities to construct critical infrastructure projects that would not otherwise occur in the absence of the additional incentives, consistent with Section 10(e) of the Pennsylvania Infrastructure Investment Authority Act (35 P.S. § 751.10(e)). In addition, the definition of “disadvantaged” communities under the CWSRF IUP and DWSRF IUP is reviewed and approved by the United States Environmental Protection Agency, consistent with the requirements and goals of the State Revolving Fund programs.

The terms requesting to be defined are further explained within the existing narrative of the IUP, except for grant and principal forgiveness. A grant is a sum of money given by a government, organization, or person for specific purpose, without having to pay it back. Principal Forgiveness is an actual loan that doesn’t need to be repaid. The two function similarly in that no repayment is required; however, a grant traditionally carries more terms and conditions than what a principal forgiveness loan may carry, which can add to costs.

The purpose of the resulting user rate reduction needing to be less than \$15 on an annual basis is to assure that the limited grant and principal forgiveness dollars can make the most impact to move projects that otherwise wouldn’t move forward. Traditionally, a higher demand exists for grant and principal forgiveness dollars than what is available. Often, a complete funding package consists of prorated grant and principal forgiveness dollars with the difference made up of low interest. The question to be asked is if using grant and principal forgiveness on projects where it has less than a \$15 annual impact, which equates to less than \$1.25 per month, is the most effective use of grant and principal forgiveness dollars. Without this requirement, grant and principal forgiveness dollars would be further diluted and have less of an impact on projects that wouldn’t otherwise move forward.

**13. Comment:** “Green infrastructure provides important climate-resilience benefits to people, in addition to reducing the amount of pollution released to waterways... Pennsylvania would benefit from additional pathways for supporting (especially through additional subsidy) distributed, flexible, nature-based infrastructure, especially projects that can provide shade and improved air quality in places where the most people stand to benefit.” The first recommendation is to “add the following paragraph to page 17 of the IUP after the paragraph on ‘Financing Rates’: Projects that Mitigate Stormwater and/or Encourage Sustainable Project Planning, Design, and Construction – As required by the BIL, projects that mitigate stormwater and/or encourage sustainable project planning, design, and construction are eligible for additional subsidy in the form of forgiveness of principal, grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt. Applicants seeking funding for projects that mitigate stormwater and/or encourage sustainable project planning, design, and construction may receive additional subsidy even if they do not qualify under the Affordability Criteria or as a disadvantaged community set out above. The type of additional subsidy will be determined on a project-by-project basis. Principal forgiveness subsidies will be prioritized for nature-based green stormwater infrastructure project.” The second recommendation suggests creating “a set-aside of BIL-funded additional subsidy for nature-based urban green infrastructure that reduces combined sewer overflows while also providing environmental benefits such as shade and improved air quality.” The third recommendation encompasses changes to the Nonpoint Source Project Ranking Criteria and suggests modifying “both the Benefit-to-Cost criteria and the Planning criteria (IUP Attachment 4) to incorporate and prioritize community benefits of projects (such as shade, air quality improvements, public accessibility of green features or educational elements, etc.) in addition to water quality benefits; and increase bonus points for Environmental Justice communities.” (10)

**Response:** The primary goal of the PENNVEST program is to improve water quality. It has been many years since PENNVEST has had to defer a project to the next PENNVEST Board meeting due to demand outpacing supply of funds. However, if this becomes an issue, PENNVEST will consider increasing the additional points for green infrastructure and projects located in an environmental justice community.

Also, with the current sources of available funds, PENNVEST anticipates being able to fund all projects that are eligible for financing and ready to proceed, as further supported by the fact that PENNVEST has financed every project that has been administratively and technically approved since 2015. Current funding sources, including those funds available under the BIL, prioritize lead remediation, including line replacement projects, as well as PFAS contamination on both the Clean Water and Drinking Water side.

**14. Comment:** “Municipalities and their water systems face rapidly increasing costs and a growing list of regulatory requirements. There is concern that some of these requirements, such as new drinking water rules for toxic ‘forever chemicals’, will drive an increase in water privatization. While some of these rules apply to drinking water, rather than wastewater, the collective strain will be felt by all municipalities that provide both drinking water and wastewater systems. Privatization of water rates has serious implications for affordability: Private ownership of water systems results in higher water prices and less affordability. PENNVEST’s current structure requires that entities must show rates are unaffordable in order to qualify for principal forgiveness loans. This creates a perverse economic incentive whereby utilities could be incentivized to increase rates beyond what is affordable, in order to qualify for principal forgiveness. PENNVEST should consider adjusting its evaluation criteria to allow municipalities to qualify for principal forgiveness loans *before* the water rates become unaffordable, or before the costs a water system incurs become so great that the system is privatized. One possibility would be to create criteria that allow an entity to show that known projected costs of compliance with new clean water requirements, if implemented, will result in unaffordable rates.” (10)

**Response:** Funding for Emerging Contaminants Grants are available to control “forever chemicals,” and with the need of such systems, industries are developing affordable treatment technologies, tools, and systems. Public education for source control practices to minimize PFAS entering our drinking water systems will also alleviate public fear. PENNVEST also funds Lead Service Line Replacement projects through LSL Replacement Grant to help systems in need to comply with other regulatory requirements. It should be noted that PENNVEST has decreased the requirements of the affordability analysis from 1.5% to 0.5% of median household income to 1.25% to 0.5% of median household income in an effort to make more communities qualify as disadvantage communities. Additionally, the establishment of rates is a local decision.

**15. Comment:** “PENNVEST must prioritize leveraging funds, including federal, bonds, etc., to serve the goal of bringing in more much needed funding for the Commonwealth. Pennsylvania water utilities, as discussed above, are under increasing pressure and burden to ensure that the Pennsylvanians have clean water in the face of threats from pollution and climate change. This action will increase the overall funds available without additional burden to Pennsylvanians.” It is recommended that “PENNVEST should examine opportunities for leveraging additional funds through bond markets, and incorporate these opportunities into its IUP where possible.” (10)

**Response:** The primary goal of the PENNVEST program is to improve water quality. With the current sources of available funds, PENNVEST anticipates being able to fund all projects that are eligible for financing and ready to proceed, as further supported by the fact that PENNVEST has financed every project that has been administratively and technically approved since 2015. When demand for funding exceeds supply, PENNVEST will consider leveraging the program.

**16. Comment:** Pennsylvania’s CWSRF can further support GSI initiatives to prioritize investments in disadvantaged communities and stormwater management and give more priority to GSI. “Offering additional subsidy for GSI projects reflects not only the stormwater and sustainability benefits of these water infrastructure solutions, but also their equity and affordability benefits. These green and distributed solutions are also often less costly and quicker to install than larger public works projects, thus keeping rates more affordable, while building local resilience to disasters and the ability to withstand climate change impacts. Critically, these greener and distributed strategies also provide lasting economic benefits, including local green jobs and economic development. Distributed stormwater management strategies can also go a long way toward addressing water equity issues by addressing CSO and flooding issues in disadvantage neighborhoods... The IUP does not appear to allow applicants seeking funding for projects that mitigate stormwater and/or encourage sustainable project planning, design, and construction to obtain principal forgiveness or other additional subsidy support unless they also meet the Affordability Criteria or are deemed to be ‘disadvantaged’ [putting] the CWSRF at odds with the BIL and the Clean Water Act.” The commenter recommends “revising the IUP to clarify that ‘Stormwater Mitigation’ and ‘Sustainable Project Planning, Design, and Construction’ Projects are Projects Eligible for Additional Subsidy [and] ensure greater consistency with the BIL requirements and that PENNVEST and DEP are exercising their full authority under Section 1383 of the Clean Water Act, by adding the following to page 17: Projects that Mitigate Stormwater and/or Encourage Sustainable Project Planning, Design, and Construction As specified by the BIL and the Clean Water Act, projects that mitigate stormwater and/or encourage sustainable project planning, design, and construction are eligible for additional subsidy in the form of forgiveness of principal, grants, negative interest loans, other loan forgiveness, and through buying, refinancing, or restructuring debt. Applicants seeking funding for projects that mitigate stormwater and/or encourage sustainable.” (9)

**Response:** The projects described are eligible for additional subsidy in accordance with the affordability analysis which is approved by EPA. As stated, the affordability analysis provides an object measure of affordability as it measures the ability of the applicant to move forward with a project based on comparison of the resulting residential user rate to what is considered an affordable residential user rate. The PENNVEST affordability analysis determines whether an applicant is “disadvantaged” for purposes of determining project funding. The core of the PENNVEST affordability analysis looks at the system-wide residential user rate to determine if the applicant is “disadvantaged.” If an applicant is deemed “disadvantaged,” it becomes eligible for hardship funding, which may include an extended term, a lower interest rate, or grant or principal forgiveness loan funds. The primary goal of the PENNVEST hardship funding program is to provide an incentive to disadvantage communities to construct critical infrastructure projects that would not otherwise occur in the absence of the additional incentive, consistent with Section 10(e) of the Pennsylvania Infrastructure Investment Authority Act (35 P.S. § 751.10(e)). Moreover, the BIL is clear in its direction on the use of principal forgiveness loan funds, and PENNVEST is required to comply with the terms and conditions of the various Capitalization Grants under which the funds are awarded to Pennsylvania. PENNVEST does not have the discretion to establish its own priorities for the use of BIL funds.

**17. Comment:** Although there have been “some revisions to PENNVEST’s Stormwater Affordability Criteria since the BIL was enacted, [they] do not appear to substantively change how the affordability of stormwater projects is evaluated consistent with the BIL or EPA guidance.” The criteria in the IUP “use a system-wide perspective [and] rely on median household income and a determination of whether the proposed project would make user rates unaffordable.” Since it is encouraged to use BIL funds for “communities or subsets of communities that are most in need [and] GSI projects are typically disbursed throughout a community and provide localized benefits for a particular neighborhood or subset of properties [and] the criteria are contingent upon an unaffordable rate,” the commenter recommends “the Affordability Criteria for GSI projects should be based on the service area that would be impacted by the proposed project rather than system wide and use income indicators other than median household income [by adding the following to the Stormwater Projects section on page 14: The affordability of green stormwater infrastructure projects that provide stormwater services to an identifiable project area will be evaluated based on the service area impacted by the proposed project instead of system wide. This affordability analysis will consider income based on the options listed at page 41 of EPA’s March 2022 Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law Memo, and will not rely solely on median household income.” (9)

**Response:** The affordability analysis provides an object measure of affordability as it measures the ability of the applicant to move forward with a project based on comparison of the resulting residential user rate to what is considered an affordable residential user rate. The PENNVEST affordability analysis determines whether an applicant is “disadvantaged” for purposes of determining project funding. The core of the PENNVEST affordability analysis looks at the system-wide residential user rate to determine if the applicant is “disadvantaged.” If an applicant is deemed “disadvantaged,” it becomes eligible for hardship funding, which may include an extended term, a lower interest rate or grant or principal forgiveness loan funds. The primary goal of the PENNVEST hardship funding program is to provide an incentive to disadvantaged communities to construct critical infrastructure projects that would not otherwise occur in the absence of the additional incentives, consistent with Section 10(e) of the Pennsylvania Infrastructure Investment Authority Act (35 P.S. § 751.10(e)). In addition, the definition of “disadvantaged” communities under the CWSRF IUP and DWSRF IUP is reviewed and approved by the United States Environmental Protection Agency, consistent with the requirements and goals of the State Revolving Fund programs. Moreover, Median household income alone is not used to identify low-income populations. This is adjusted factoring changes in the Consumer Price Index to calculate adjusted MAHI.

It is utilized as a measure in conjunction with other socio-economic factors that are provided by Pennsylvania Department of Community and Economic Development, including the percentage of the population over age 64, the percentage of the population below the poverty rate, and the rate of population changes in the community between census data collection to determine a community's ability to pay for a project.

**18. Comment:** In 2023 with regard to GSI projects, the commenter recommended expanding opportunities in the IUP by clarifying “eligibility beyond detention basins as follows: (1) new or updated storm sewer systems to reduce stormwater or to separate stormwater from sanitary sewers and (2) detention basins and other green and distributed infrastructure projects on both public and private property to control stormwater runoff. PENNVEST responded it will consider clarifying that practices, in addition to detention basins, are eligible stormwater projects for both public and private applicants. Because of project classification criteria, most green stormwater infrastructure projects will be classified as Non-Point Source projects. Most Stormwater projects consist of traditional gray infrastructure to mitigate flooding. PENNVEST has not yet made this clarification... The draft IUP description of ‘Stormwater Projects’ does not include GSI as a type of stormwater project, using the same description from prior IUPs. In addition, the IUP section titled, ‘Green Infrastructure Projects’ appears to limit GSI to nonpoint source projects. Taken together, these IUP sections are unclear on whether GSI qualifies as a Stormwater Project.” The commenter recommends that “PENNVEST clarify that GSI projects are ‘stormwater projects’ and/or ‘nonpoint source projects’ for purposes of the CWSRF by adding the following to page 9: Pennsylvania proposes to utilize at least 10% of the Base Grant and 10% of the General Supplemental Grant to fund green infrastructure projects as defined by EPA to include the following categories: 1. Water efficiency; 2. Energy efficiency; 3. Green Infrastructure (Stormwater and Nonpoint Source Projects).” The commenter also recommends the following changes on page 10: In 1992, PENNVEST began utilizing state funds to provide low interest loans to construct, improve and rehabilitate public stormwater facilities to address urban runoff. Facilities eligible for this funding are: (1) new or updated storm sewer systems to reduce stormwater flooding or to separate stormwater from sanitary sewers and (2) detention basins **and other practices that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring, or capturing and using stormwater, i.e., green infrastructure** to control stormwater runoff. Consistent with PENNVEST statute, Pennsylvania’s stormwater management regulations, and the addition under WRRDA of eligible activities for CWSRF funding to ‘manage, reduce, treat, or recapture stormwater or subsurface drainage water,’ investment in the construction of the more traditional ‘bricks and mortar’ type projects may be necessary. Attachment 5 is the ranking framework for these projects. (9)

**Response:** The Project Classification Process section and the Green Infrastructure Projects section located in IV.B. of the CWSRF IUP defines which projects are categorically green under the criteria for “green infrastructure” as defined by the EPA Grant Guidance, “2012 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility” dated April 2012. Green stormwater infrastructure is one type of solution to stormwater and nonpoint source pollution problems and is eligible under current eligibility criteria. Further classifying either as green stormwater infrastructure is not necessary to be eligible.

**19. Comment:** “Update the scoring in the IUP’s ranking frameworks to give more weight to nature-based infrastructure solutions.” As the commenter mentioned in the 2023 recommendations, providing additional points for green and distributed infrastructure projects to incentivize applicants and accelerate the implementation of GSI projects across the state, particularly in disadvantaged and flood prone areas... to address stormwater runoff and pollution issues. Specifically, we recommend increasing the points offered to projects in Environmental Justice (EJ) communities, and awarding additional points to GSI projects that would provide targeted benefits to EJ communities. We also recommend providing extra

points for projects able to generate co-benefits for the community, such as improved air quality, workforce development and job creation, biodiversity conservation, increased community engagement, and reduced heat island effect. Finally, we recommend adding language to the IUP to include GSI eligibility under 'Public Health' in ranking frameworks.” (9)

**Response:** DEP added five (5) points for EJ communities to the Drinking Water Environmental Priority Ranking system and the PENNVEST Board approved the revision on April 24, 2024. A similar change will be proposed once the Ranking Framework for PENNVEST Wastewater Projects is opened for update. Green stormwater infrastructure projects are eligible for funding. Points that consider workforce development and job creation are considered by DCED and are outside of the environmental ranking system. In addition, PENNVEST has financed every project that has been administratively and technically ready to proceed since 2015.

## **ATTACHMENT A LIST OF COMMENTERS**

- (1) Mary Springer, 355 E. 9<sup>th</sup> St., Erie, PA
- (2) Pat Lupo, 355 E. 9<sup>th</sup> St., Erie, PA
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- (5) Allison Fradkin, 3616 Torrey Pines Pkwy., Northbrook, IL 60062
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- (7) Mark Scheunemann, Chicago, IL
- (8) Marie Busby, 178 Cayuga St., Groton, NY 13073
- (9) Caroline Koch, WaterNow Alliance, 1016 Lincoln Blvd., San Francisco, CA 94129
- (10) Lia Mastropolo, American Rivers, et al, 5138 Locust Street, Philadelphia, PA 19139
- (11) Jill Ryan, Freshwater Future, et al, PO Box 2479, Petoskey, MI 49770
- (12) William Pickering, Pittsburgh Water and Sewer Authority, 1200 Penn Avenue, Pittsburgh, PA 15222