

# Private Lead Service Line (LSL) Replacement Projects Questions & Answers

## ITA/PERF Variance & SDWLP Application:

1. We didn't know about this funding last October so we didn't submit an **Intent to Apply (ITA) or Priority Evaluation and Ranking Formula (PERF)** by the October 31, 2015 deadline. Is there any way we can apply for SFY 2017 LSL funding?

Yes, you can still apply. There are two actions that you need to take to apply for the private LSL principal forgiveness (PF) funding:

- **ITA/PERF variance** - Since the private LSL replacement program had not yet been conceived prior to the ITA/PERF deadline for SFY 2017 projects, the department made a decision to approve requests for a variance to the deadline for private LSL projects. A template variance request letter has been posted on our website. This template can be used by municipalities wishing to request a variance to the ITA/PERF deadline for a private LSL project. Once the variance is approved we will send out information on accessing the online system in order to submit the ITA and PERF information.
- **SDWLP Application and LSL Application Addendum** – These forms are now available on our website and must be submitted by the June 30, 2016 deadline for SFY 2017 funding. Applications for private LSL PF received after June 30<sup>th</sup> may be awarded on a first come basis if funds are available.

For more information on application processes, see **Application/Submittal/SDWLP requirements**, further in this document.

## Principal Forgiveness Calculations:

2. Our municipality qualifies for **45% PF under the principal forgiveness methodology**. Does this mean we can only get PF for 45% of our private LSL replacement costs?

Any municipality that qualifies for 15% or more of PF under the methodology outlined in the Intended Use Plan can receive LSL PF up to the cap, as determined by the municipal population. The private LSL PF is meant to cover 100% of the costs related to replacing private LSLs since user fees cannot be used to pay for these costs.

3. The draft Intended Use Plan stated "For **municipalities that do not qualify under the PF methodology as a disadvantaged community**, it is possible to apply for PF funds for LSL replacement if those funds will be targeted to low-income neighborhoods". Since then we've heard that this option will not be available. Why was this changed?

We initially intended to develop a methodology to target LSL PF assistance to low-income census blocks in municipalities that do not qualify under the PF methodology. This intention was published in the draft IUP but we were subsequently notified by EPA that we could not utilize that option. This decision is based on the definition of a "disadvantaged community" in the Safe Drinking Water Act (SDWA). The SDWA (section 1452) defines a disadvantaged community as "the service area of a public water

system that meets affordability criteria established after public review and comment by the State in which the water system is located.” This definition precludes providing targeted assistance in municipalities that do not meet the affordability criteria (the PF methodology).

### Types of Projects:

#### 4. What **types of projects** can the private LSL principal forgiveness (PF) be used for?

The LSL PF can only be used for the cost of replacing private LSLs which result in the **full replacement of the lead service line for that property**. We anticipate receiving applications for several types of private LSL replacement projects:

- The private LSL replacements could be done as part of a larger municipal service/watermain replacement project;
- A municipality could choose to do spot replacements of private LSLs (as long as it results in complete lead service line replacement);
- A municipality could request to use the private LSL PF to fund a municipal rebate program for private LSL replacements;
- A municipality could request to use the private LSL PF as seed money for a municipal revolving loan fund for private LSL replacements.

Decisions on the type of private LSL replacement project are made at the municipal level. The department intends to work with each applicant to help shape their private LSL project into a form that works for everyone involved.

#### 5. What is the **difference** between a **spot replacement** project and a **municipal program**?

While at first glance these two types of “projects” may seem like the same thing, there is a difference between them. For spot replacements, the municipality directly contracts for all of the work. There will need to be coordination with homeowners but the contracting of the work and payment for the work is all done by the municipality. Davis-Bacon wage rates apply in this situation. Under a municipal program, the municipality issues a Request for Qualifications to prequalify plumbers and then the individual homeowners actually contract with the plumber to do the work. After the work is completed the municipality provides complete or partial rebate of the costs. Davis-Bacon wage rates do not apply in this situation, even if the municipality pays the plumber directly. (Note that if the municipality will be paying the plumber directly, this must be stated as part of the agreement between the municipality and the homeowner.)

#### 6. The normal policy for PF under the SDWLP is that **PF-only agreements** are not allowed unless the PF is part of a larger governmental funding package (such as with USDA-RD or ACOE). Our municipality would like to use the LSL PF funds for spot replacements or for a municipal funding program for private LSL replacement. These types of projects would not include non-LSL replacement costs so there would be no need for loan funding. Will PF-only agreements be allowed for projects that are not associated with a watermain replacement project?

Yes, PF-only agreements will be allowed for private LSL replacement projects that are not a part of a larger watermain replacement project. See the next question for other instances where PF-only agreements may be allowed.

7. Our municipality has **already budgeted or bonded** for this year's watermain replacement projects. If we want to include private LSL replacements as part of these projects, is there any way we can receive the LSL PF without taking out a loan from the SDWLP for the remaining costs?

For SFY 2017 only, the department has decided to allow PF-only agreements for municipalities that are doing private LSL replacements as part of a larger watermain replacement project as long as the non-LSL replacement costs are being covered by municipal funds or the bonding for the costs is already in place. This is in recognition of the fact that many municipalities may have already budgeted for their upcoming watermain replacement and the department does not want to require them to take out a loan from the SDWLP when they already have secured funds for the project. For SFY 2018 we would expect that watermain replacement projects that also include private LSL replacement costs would come to the SDWLP for a complete funding package that included PF for private LSL replacements and a loan for the remaining costs.

8. When you say that LSL PF funds can be used for **schools and licensed daycare centers**, does this include technical schools and colleges and other schools for higher education?

The LSL PF that is available (in addition to the municipal cap) for schools and licensed daycare centers can only be used for K-12 schools (both public and private) and licensed daycare centers for children (not adult daycare).

### Types of Costs:

9. Can LSL PF be used for the replacement of lead service lines to **commercial and business properties**?

No, the private LSL PF cannot be used for commercial or business properties. LSL PF is only available for private residential LSL replacements (including apartment buildings) and for K-12 schools and licensed daycares.

10. Can the LSL PF be used to replace a private LSL if the **public portion of the service line is still composed of lead**?

No; the private LSL PF can only be used when it results in **complete** LSL replacement. If a private LSL is proposed for replacement and the public portion of the service line is also lead then the municipality **must** replace the public portion of the service line.

11. What about homes or schools that still have **plumbing and/or fixtures containing lead**; can the private LSL PF be used to replace these sources of lead as well?

Federal regulations prohibit SRF funds from being used to replace plumbing and/or fixtures inside buildings. We can cover the replacement up to the normal connection

point for the service line. The Community Development Block Grant (CDBG) program operates a revolving loan fund for rehabilitation loans that can be used to remove sources of lead within a household. Eligibility is income based. Information can be found at the following link: <http://www.doa.state.wi.us/Divisions/Housing/CDBG-Housing-Revolving-Loan-Fund-Program>

12. What about **lead goosenecks or galvanized pipe**? Can the LSL PF be used to replace these as well?

Yes it can. Private service lines with lead goosenecks are still considered lead lines and thus are eligible to be replaced. Galvanized service lines that have been served by lead lines in the past may still release lead for an extended period of time, so in the case of galvanized private lines that were previously served by lead lines, the replacement costs would be eligible.

13. What **associated costs** can be covered with the LSL PF? Or is the money just for the actual replacement costs?

Costs directly related to the private LSL replacement will be allowed for reimbursement with LSL PF. This would include investigative costs, engineering (prorated if part of a larger project), easements, force account, etc. User rates cannot be used to cover any costs related to private LSL replacement so those costs cannot be included as part of a regular SDWLP loan.

14. Can the LSL PF be used to cover **other sources of lead** in the distribution system?

No, the LSL PF is only for private LSL replacement costs. Any lead components of the publicly-owned distribution system, including meters, can be funded through normal means. User fees cannot be used to pay for costs on private property so that is where we are targeting the LSL PF.

15. What happens if we **dig up a service line thinking it is lead** but it turns out not to be? Who bears the cost?

Efforts should be made to identify private lead service lines prior to excavation but if a line is thought to be lead but upon excavation turns out not to be, the cost of that excavation would be eligible for funding.

16. In situations where there is a **commercial business that has apartments located above**, would the lead service line be eligible for replacement with the LSL PF since the building also serves as a residence?

In this situation the LSL would be considered a private residential LSL and thus would be eligible to be replaced using private LSL PF.

### **Federal Requirements:**

17. Does **Davis-Bacon** apply to plumbers working on private property?

We are actively discussing this issue with EPA and the U.S. Dept. of Labor. Further clarification will be forthcoming. We believe if a private homeowner contracts for and pays a plumber for this work, Davis-Bacon would not apply. However, how this could fold into a municipal LSL PF funding package is still being discussed with the federal agencies.

18. What other **federal requirements** apply?

Projects seeking private LSL PF will need to comply with the Use of American Iron and Steel (UAIS), as well as Disadvantaged Business Enterprise (DBE) solicitation requirements. We are continuing to investigate other federal cross-cutters to ensure projects meet all requirements.

19. How can the **federal regulations** be **incorporated into a municipal program** where the homeowner is contracting with the plumber for the work?

While municipal program models are still under development and discussion, we anticipate that under a municipal program the municipality will be required to issue a Request for Qualifications (RFQ) and develop a list of prequalified plumbers with whom homeowners can contract to replace their individual LSLs. The applicable federal regulations (DBE, UAIS, Davis-Bacon (if applicable)) would need to be included in the RFQ requirements. Homeowners would then be required to contract with a plumber from the prequalified list. The municipality would have an agreement with the homeowner in which the municipality would pay the plumber on behalf of the homeowner and those receipts would be submitted as part of the disbursement request to the DNR. More information on this type of program, including sample language, will be forthcoming.

**Application/Submittal/SDWLP requirements:**

20. If applying for **PF-only** for private LSL replacements, do all **parts of the SDWLP application** have to be completed and Financial Statements attached?

No, only minimal parts of the regular SDWLP application would need to be completed if requesting PF-only (no regular loan funds) for private LSL replacements. Pages 1-4 will need to be completed and submitted along with the *SDWLP Application Addendum for Private LSL Replacement Projects*. (Note that most of the checklist items on pages 1 and 2 of the SDWLP application will be marked as N/A). Further instructions are included on the Application Addendum.

21. For PF-only applications, are the **authorized representative resolution** and the **reimbursement resolution** required? Are any other resolutions necessary? At what point in the process are the resolutions needed?

A reimbursement resolution is **not** required for a PF-only application. An authorized representative resolution **is required** with all SDWLP applications. In general this resolution should be submitted along with the application but it can be submitted shortly

afterwards if there was not sufficient time to pass the resolution prior to the application deadline. A sample authorized representative resolution is available on our website.

One other resolution is required for PF-only Financial Assistance Agreements. This is a resolution authorizing the execution of the Principal Forgiven Financial Assistance Agreement. This resolution is passed at the meeting when the Financial Assistance Agreement is signed.

22. If LSL replacements are being done as spot replacements or through a municipal program (such as the City of Madison did), what are the **plans and specifications submittal requirements**?

Plumbing codes for private services are governed by the Department of Safety and Professional Services (DSPS). DSPS has indicated that private residential lines are not reviewable projects under their regulations; however, any private LSL replacements would be required to meet applicable local, state (DSPS), or federal codes. The DNR does not have any regulatory requirements for private LSLs and would therefore not need plans and specifications for this portion of the work.

23. What about the required **legal opinion regarding land and easements**? The private LSL replacements will not be on municipally-owned land and also might not be covered by an easement.

This is a SDWLP administrative code requirement – if an easement is not necessary and a private contractor does the work, this requirement would not apply. This will vary from project to project.

24. If doing a municipal program or spot replacements, **how long will we have to spend the funds**?

We will allow two years from the date the Financial Assistance Agreement is executed for the funds to be expended by the municipality. This does not mean that 100% of the disbursement requests have to be submitted to the DNR within two years, but the funds have to be 100% expended within two years.

25. If a municipality uses the LSL PF to seed a **revolving loan fund** for private LSL replacements, **what happens to the money** once all the LSLs have been replaced?

In the case of a municipal revolving loan program for private LSL replacements, the municipality would first need a plan for identifying all the private LSLs in existence in their community. Once they have identified and replaced all the LSLs they would certify to the SDWLP that all known LSLs have been replaced. The municipality will also need to sign an agreement to replace any additional LSLs that may have been missed and are subsequently discovered. After certifying that all known LSLs have been replaced, the funds would then revert to the water utility to be used for other utility needs. The municipality will need to keep in mind that ratepayer funds may not be used to pay for replacement of private LSLs.