

The 21-day public comment period for the SFY 2022 Safe Drinking Water Loan Program (SDWLP) Intended Use Plan (IUP) opened on May 27, 2021 and closed on June 18, 2021. During that time, one set of extensive comments was received. The table below lists the comments and the DNR response.

IUP Section	Comment	Submitted By	DNR Response
IV.	<p>In the draft IUP, the Wisconsin Department of Natural Resources (WDNR) has opted to add \$1,420,120, approximately 7.5% of the capitalization grant, to the 14% required by P.L. 116-260 to be provided as additional subsidy (\$2,624,860) for a total of \$4,044,980 from the capitalization grant. Wisconsin provides all additional subsidy as principal forgiveness (PF).</p> <p>Federal law allows states to make up to 35% of the capitalization grant available for additional subsidy in addition to the 14% required by P.L. 116-220. However, WDNR has only made an additional 7.5% of the capitalization amount available for PF. Given the urgent need for water infrastructure upgrades in Wisconsin, including the replacement of LSLs in Milwaukee, coupled with low-income ratepayers' limited ability to repay SDWLP loans, WDNR should strive to make the maximum amount of PF available for the SFY 2022 funding cycle: 49% of the capitalization grant (14% + 35%) for a total of \$9,187,010.</p>	<p>Janet Pritchard, Director of Programs, Milwaukee Water Commons; Richard Diaz, Chair, Coalition on Lead Emergency (COLE); Tony Wilkin Gibart, Executive Director, Midwest Environmental Advocates; Robert Kraig, Executive Director, Citizen Action of Wisconsin; Conor Williams, Economic Policy Analyst, Community Advocates - Public Policy Institute; Elizabeth Ward, Chapter Director, Sierra Club – Wisconsin Chapter; Rev. Joseph Jackson Jr., President, MICAH; Dennis M. Grzezinski, Law Office of Dennis M. Grzezinski; Rabbi Bonnie Margulis, Executive Director, Wisconsin Faith Voices for Justice; Kerry Schumann, Executive Director, Wisconsin Conservation Voters</p>	<p>We appreciate your comment and understand your desire to maximize the amount of principal forgiveness (PF) that is provided. We also understand the urgent need for water infrastructure upgrades in the state. Since PF first became available under the 2009 stimulus, Wisconsin has awarded 84.5% of the maximum PF allowed under federal regulations (\$120,777,905 out of a maximum of \$142,919,235). This \$120 million is money that will not revolve to provide more low interest financing for water infrastructure in the future. In addition, Wisconsin's state revolving fund programs offer some of the lowest interest rates in the country which has a significant impact in terms of affordability of the financing. The State Revolving Funds are designed to revolve in perpetuity. Portions of the capitalization grant that are utilized for principal forgiveness, administration, or the programmatic set-asides do not grow the corpus of the fund and are therefore not available to make additional loans in the future. We have had recent years where it initially appeared that we would not have sufficient loan funding for all applicants. This potential shortage of funding and the need to continue growing the size of the fund has played into our decision in recent years to not allocate the maximum amount of PF allowed under federal regulations. We model the sustainability of the fund on a regular basis & had been anticipating increasing PF amounts in future years. With the recent passage of the federal infrastructure bill, significantly more PF will be available during the next few years. For SFY 2022, we increased the total amount of PF from \$4,296,556 to \$7,150,247 between the draft and final IUPs, though only \$1 million of the increase came directly from the current capitalization grant. The remainder was from PF that was not awarded on the SFY 2021 funding list, as well as unutilized PF that was released through project closeouts.</p>

<p>XIV. A.</p>	<p>To determine a municipality's eligibility for principal forgiveness, the DNR proposes in the draft IUP to score applicants on the basis of population and Median Householder Income (MHI) in comparison to the state MHI, in accordance with the tables found on page 15 of the IUP.</p> <p>Awarding points to very small communities recognizes that such communities must distribute the cost of needed water infrastructure projects across a very small ratepayer base, and this can pose financial hardship for small communities with low or moderate household incomes. Some small communities that are also relatively affluent, however, may be better able to pay for their water infrastructure needs, notwithstanding their small ratepayer base, compared to larger communities facing greater communitywide financial hardship. The formula for determining PF should place greater relative weight on financial factors than on population size. Communities that are both small and financially distressed will still benefit from a system that weights both.</p> <p>Metrics based on median households income (MHI) have been broadly criticized because measuring affordability at the average income level of a community does not indicate if the large majority of residents can afford water service, or would be able to afford it if water bills are increased to repay SDWLP loans procured to pay for essential water infrastructure projects such as replacement of</p>		<p>Thank you for your comment. We recognize that MHI has limitations as far as accurately portraying the ability of individual households to afford their water rates. Environmental Improvement Fund (EIF) staff intend to work over the coming months to assess the affordability criteria for the SDWLP and CWF and to consider changes to the methodology for allocating PF. There is also the possibility that the federal Justice40 initiative will result in a federal definition of disadvantaged communities being imposed on the state revolving fund programs. We are hopeful that this uncertainty will be cleared up soon so we know whether to invest staff time into developing a new methodology or whether one will be mandated.</p>
-----------------------	--	--	---

	<p>lead service lines. Wisconsin might instead consider adopting a set of criteria more directly focused on affordability at the household level. The ALICE (Asset Limited, Incomed Constrained, Employed) metrics, for example, consider essential cost-of-living factors (housing, child care, food, transportation, health care, and basic technology) as well as household size and income to determine a 'household survival budget' for various regions in Wisconsin, and assess the percentage of households that cannot afford these basic needs.</p> <p>An alternative approach would be to simply supplement Tables 1 and 2 above with additional points awarded to municipalities with a high poverty index. For example, points could be awarded in relation to the percent of a municipality's population below 200% of the poverty level, similar to the criterium introduced to prioritize applicants for the Private Side LSL Replacement Program in the May 2021 draft IUP.</p>		
<p>XIV. A.</p>	<p>While small communities can face unique hardships due to the need to spread infrastructure costs across a small ratepayer base, communities with decreasing population also face unique hardships due to aging water systems that are oversized for their needs. This is the case for Milwaukee and other Great Lakes cities in the post-industrial era. Not only is much of Milwaukee's water infrastructure 50-100+ years old and in need of repair or replacement, but this system was built and expanded to support a larger population than resides in Milwaukee today, as well as a water-dependent</p>		<p>Thank you for your comment. PF points for municipalities projected to lose 10% or more of their population over the next 20 years are part of the CWFPA affordability criteria. EIF staff intend to work over the coming months to assess the affordability criteria for the SDWLP and CWFPA and to consider changes to the methodology for allocating PF.</p>

	<p>industrial base which no longer exists in the city on the same scale that it did historically. Because it is not easy to simply “downsize” a municipal water system in such circumstances, Milwaukee ratepayers bear the burden of maintaining a system that is too large for current needs. This can overstretch ratepayers for water systems serving a declining population and/or declining industrial base in a similar fashion to the way ratepayers in small communities are overstretched. Therefore, PF points should be awarded for municipalities that have experienced significant population and/or industrial decline over the decades since their water systems were built.</p>		
<p>XIV. A.</p>	<p>WDNR should consider adding points to its PF scoring system for proposed projects that would deliver triple-bottom-line benefits, particularly projects that enable socioeconomic benefits to be realized during project execution by incorporating paid job training and transitional jobs for local low-income residents that have historically had difficulty accessing good paying water infrastructure jobs. By increasing economic opportunities in the communities facing the need for water infrastructure repairs, this would help to offset the cost borne by these communities for the repairs.</p>		<p>We realize that Milwaukee takes significant steps to utilize local residents and disadvantaged businesses as part of their procurement process. All SDWLP applicants are required to make an effort to utilize disadvantaged businesses, pay federal wage rates, and follow municipal procurement regulations. We’re open to exploring this concept but feel it would be difficult to implement as part of the scoring process.</p>

<p>XIV. A.</p>	<p>Under the PF scoring system set out in the draft IUP, Milwaukee would receive 70 points because its MHI is between 66% and 71% of the state MHI (Table 2), making Milwaukee eligible to receive 30% of its SDWLP loan as principle forgiveness (Table 3). A similar PF Scoring system was adopted in Wisconsin’s IUP for FFY 2020 Funds for the SFY 2021 Funding Cycle. Under that IUP, Milwaukee received 70 PF points for a proposed project to replace water mains including the public side of 1,000 adjacent LSLs, and therefore was eligible for PF to cover 30% of the project costs, which would amount to \$7,479,898 in PF.</p> <p>In fact, however, Milwaukee received \$0 in PF for the SFY 2021 Funding Cycle. This is because the IUP ranked eligibility for PF on the basis of Project Evaluation and Ranking Formula (PERF) scores rather than municipalities’ PF scores, and projects ranked above Milwaukee used up all the available PF funds. Had payment of PF been ranked on the basis of PF scores, Milwaukee would have received PF up to the maximum \$500,000 allowed per municipality under the IUP for the SFY 2021 Funding Cycle.</p> <p>The Project Evaluation and Ranking Formula for ranking SDWLP projects for SDWLP loans is set out in Wis Admin Code NR § 166.23 and cannot be varied through the IUP. There is nothing in NR § 166 or other federal or state law, however, that requires WDNR to incorporate PERF rankings for the purpose of allocating principal forgiveness.</p>		<p>Thank you for your comment. We do have to keep in mind the requirements of the SDWA which states that priority must be given to projects that 1) address the most serious risk to human health; 2) are necessary to ensure compliance with the SDWA; and 3) assist systems most in need on a per household basis. The idea of allocating PF in PF score order rather than PERF score order is an interesting one that will be considered as our affordability criteria and PF allocation methodology are evaluated over the coming year. Perhaps some combination of PF score and PERF score could be utilized.</p>
-----------------------	---	--	--

	<p>While the PERF prioritizes projects for eligibility for SDWLP loans and includes within it points attributed to financial need, the PERF is not as carefully tailored to determining which SDWLP-eligible projects are most in need of PF on the basis of a community's financial hardship compared to the PF scoring. Therefore, the IUP should rank projects for payment of PF in accordance with PF scores, not PERF scores.</p>		
<p>XIV. A.</p>	<p>The draft IUP imposes a \$500,000 cap on the amount of PF any municipality can receive per year. This rule clearly discriminates against larger municipalities that are likely to require larger, more costly projects to maintain their water systems to protect public health, including the replacement of large numbers of LSLs, as is the case in Milwaukee. Smaller communities are already favored in a number of ways by SDWLP. For example, Wis Admin Code NR § 166.13 provides that only municipalities with populations below 10,000 are eligible for a more steeply discounted interest rate on SDWLP loans. Smaller municipalities are also favored in the financial need criteria included within the PERF in addition to receive PF points on the basis of their size. Where, notwithstanding all of these elements favoring smaller municipalities, a larger municipality demonstrates that it should be prioritized for PF funds, this should not be undercut by an arbitrary cap on the amount of PF it can receive.</p>		<p>Thank you for your comment. The \$500,000 cap on PF in the SDWLP is intended to spread the available PF among more municipalities and Wisconsin currently awards PF to more municipalities than most other Great Lakes states. Using the SFY 2021 Funding List as an example, allocating the maximum amount of PF allowed under federal regulations, and allocating PF in PF score order as suggested previously, 24 projects would receive PF (with the last receiving only a portion of what they would be eligible for) as compared to 30 projects receiving PF with the \$500,000 cap in place (also with the last receiving only a portion of what they would be eligible for). Under the first scenario, no cap, Milwaukee would have been the cut off project that received a partial allocation. The same situation occurs when running these two scenarios against the SFY 22 Funding List. Allocating the maximum amount of PF with no cap, 26 projects receive PF with the last (Milwaukee again) receiving only a partial allocation. Allocating the maximum amount of PF with a \$500,000 cap, 35 projects are allocated PF with the last receiving a partial allocation.</p> <p>The amount of the cap is considered each year when developing the IUP. With the increase in funding, including a significant amount of PF, coming from the Infrastructure bill, increasing the municipal cap is one of the changes that will be discussed for the SFY 2023 IUP.</p>

<p>IX. C.</p>	<p>The draft IUP Introduces new prioritization criteria for principle forgiveness available through the Private LSL Replacement Program. These include:</p> <ul style="list-style-type: none"> • Points equivalent to the percent of a municipality’s population below 200% of the federal poverty level • Up to 25 points in relation to the percent of population under age 5 • 10 points for having a Mandatory Replacement Ordinance requiring property owners to replace their private side LSL when the public side of the LSL is replaced by the municipality. • 30 points for exceedance of NR 809 action levels for lead in drinking water. • 20 points if all remaining LSLs in the municipality can be removed in the upcoming season. <p>Like the \$500,000 cap on PF under the regular SDWLP, awarding points on the basis of whether a municipality can remove all remaining LSLs within the upcoming year inherently discriminates against larger systems with extensive amounts of LSLs, such as Milwaukee. With 70,000 LSLs still in place, it will likely be a decade before these are all removed, even under a very ambitious replacement schedule.</p> <p>Indeed, Milwaukee could remove 10,000 LSLs annually – likely more than any other city in Wisconsin – and still be disadvantaged in relation to eligibility for PF from the Private LSL Replacement Program, simply due to the sheer scale of the LSL problem Milwaukee must confront. Therefore, this rule should be eliminated.</p>		<p>Thank you for your comment. Assisting municipalities with becoming lead-free is a goal of the department. Becoming completely lead-free has benefits beyond just removing a potential source of lead from drinking water (such as allowing a system to stop adding orthophosphates to their water which has to be subsequently removed by the wastewater treatment system). Only a handful of municipalities in any given year will be positioned to feasibly remove all their remaining LSLs in one construction season. Prioritizing these municipalities for LSL principal forgiveness is not likely to negatively impact the city of Milwaukee’s ability to also receive LSL PF. In addition, as mentioned below, the LSL priority scoring system was modified to award 20 points to large systems serving over 50,000 customers.</p>
----------------------	--	--	--

<p>XIV. A.</p>	<p>The first three factors for prioritizing PF from the Private LSL Replacement Program are well tailored to reduce the risk of exposure to lead from drinking water for those most at risk. At first glance, it might be thought that the rule awarding points for exceedance of NR 809 action levels protects those most at risk. However, awarding PF points for exceedance of NR 809 action levels could also be construed as penalizing utilities that have implemented corrosion control measure to mitigate the risk of lead exposure from drinking water where lead pipes are present, in favor of utilities that have failed to implement protective measures pending the removal of LSLs. Therefore, this rule should be modified to award points for the exceedance of NR 809 action levels only where protective measures recommended in NR 809 have been implemented, but the water system still exceeds NR 809 action levels.</p>		<p>Thank you for your comment. We understand your concerns about penalizing a larger system that is implementing corrosion control measures. We made further modifications to the scoring system for the Private LSL Replacement Program for 2022. These further modifications are described in the amended LSL portion of the SDWLP IUP that was published in November. Rather than eliminate the points for an exceedance of the NR 809 action levels, we expanded that section of the scoring criteria. Water systems whose 90th percentile result is 5 µg/L or greater will receive 10-30 points, depending on their sampling results. In addition, systems serving greater than 50,000 customers will receive 20 points.</p>
-----------------------	---	--	---