



United States Environmental Protection Agency
Regional Administrator
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

APR 15 2015

The Honorable Daniel Kildee
House of Representatives
Washington D.C. 20515

Dear Congressman Kildee:

Thank you for your March 26, 2015 letter seeking clarification as to whether the Safe Drinking Water Act and associated regulations allow the State of Michigan to forgive outstanding principal due on loans that were made to the City of Flint through the Drinking Water State Revolving Fund (DWSRF). Your letter points out the challenges that Flint is currently facing and indicates that the Congressional Research Service has identified potentially applicable legal authority that may provide a basis for loan forgiveness. Unfortunately, the provisions cited in your letter apply only to new loans. The existing loans that are the focus of your inquiry are not eligible for forgiveness.

Under the Safe Drinking Water Act, as well as regulation and recent appropriations language, forgiveness of principal is termed "an additional subsidy." The concept of additional subsidy is set out in Section 1452 (d) of the Act:

(1) Loan subsidy:

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) of this section to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) Total amount of subsidies:

For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

Under the corresponding regulation, 40 CFR Section 35.3525 (b):

(1) A State may provide loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) to benefit communities meeting the State's definition of "disadvantaged" or which the State expects to become "disadvantaged" as a result of the project. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance described in paragraph (b)(2) of this section.

(2) A State may take an amount equal to no more than 30 percent of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities. If a State does not take the entire 30 percent allowance associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance of the allowance from future capitalization grants.

The outstanding Flint loans that are the subject of your inquiry were made in 1999, 2000, 2001 and 2003. In these years, the State had the option of providing additional subsidy when making these initial loans. To exercise this option the State would have been required to issue an intended use plan identifying the new, initial financing and to determine Flint's eligibility to receive principal forgiveness. Pursuant to 40 CFR 35.3525 (b)(2), a State may not reserve the authority to provide loan subsidies; this means a state cannot allocate any previously unallocated loan subsidy using current funds.

Since the American Recovery and Reinvestment Act of 2009, Congressional appropriations have provided additional language to further clarify the timing and use of additional subsidy – language which you reference in your letter:

Provided further, that not less than 20 percent but not more than 30 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), and shall be used by the State only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients *only where such debt was incurred on or after the date of enactment of this Act:...* (emphasis added).

Consolidated and Further Continuing Appropriations Act, 2015, Pub. Law 113-235

This language provides for additional subsidy (including principal forgiveness) only for debt "incurred on or after the date of enactment of this Act." As the DWSRF loans were provided to Flint prior to the date that this language first appeared in the American Recovery and Reinvestment Act and in subsequent Appropriations Acts, the State does not have authority to provide additional subsidy for those loans.

Although the loans that are the subject of your inquiry are not eligible for loan forgiveness, the City of Flint may have opportunities to seek principal forgiveness in connection with new applications for State SRF funding. EPA is available to provide assistance with that process if requested to do so.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Ronna Beckmann or Denise Fortin, the Region 5 Congressional Liaisons, at (312) 886-3000.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Hedman', with a long horizontal line extending to the right.

Susan Hedman
Regional Administrator