

**Lead Service Line Replacement Program – BIL Funding
Amendment to SFY 2023 SDWLP Intended Use Plan
November 2022**

The Bipartisan Infrastructure Law (BIL), also known as the Infrastructure Investment and Jobs Act of 2021 or Public Law 117-58, was signed into law on November 15, 2021. BIL included \$15 Billion in dedicated funding for the Drinking Water State Revolving Funds (DWSRFs) for lead service line (LSL) identification and replacement. Wisconsin was allocated \$48,319,000 in Federal Fiscal Year (FFY) 2022 funding under this authority. No state match is required. 49% of this funding (\$23,676,310) is required to be awarded as principal forgiveness to disadvantaged municipalities or for projects targeted to disadvantaged census tracts. The remaining 51% of the LSL capitalization grant must be used for set-asides and loans.

Funds Available from FFY 2022 LSL Capitalization Grant				
Principal Forgiveness	Loans	Administration	State Program Management	Local Assistance
\$23,676,310	\$19,031,210	\$290,570	\$1,320,910	\$4,000,000

Any funding released from the previous WIFTA-funded Private LSL Replacement Program will be added to the BIL principal forgiveness (PF) pot and be subject to the same policies as described below.

BIL funding for LSL replacements (both public and private) and inventory work will be available starting in SFY 2024. This funding will be integrated with the regular Safe Drinking Water Loan Program (SDWLP), which will allow applicants to compete for general PF along with LSL PF. Since the LSL program will be integrated with the regular SDWLP, potential applicants should have submitted an Intent to Apply (ITA) and Priority Evaluation and Ranking Form (PERF) by October 31, 2022, in order to be eligible to submit an application by June 30, 2023.

Due to the fact that this Intended Use Plan amendment is being posted after the ITA/PERF deadline, we will be more flexible than normal for SFY 2024. Project scope changes between ITA and application will be allowed. If a potential applicant missed the ITA deadline, a waiver to that deadline may be requested. This flexibility will only apply to the first year of LSL BIL funding – SFY 2024.

PROJECT AND COST ELIGIBILITY

The LSL Replacement Program is open to any municipality, but due to restrictions in the BIL, PF can only be awarded to municipalities that qualify as disadvantaged under the SDWLP disadvantaged criteria (see the [Final SFY 2023 SDWLP Intended Use Plan](#) (IUP), pages 13-15), or to applicants submitting a project targeting replacements within a disadvantaged census tract or tracts. All other applicants will be eligible for loan funds only. If submitting for a project taking place in a disadvantaged census tract, all scoring criteria will be derived at the census tract level except for population trend and county unemployment rate. Note: this option is not available in instances where the census tract is larger than the municipal boundaries.

Unlike the previous WIFTA-funded Private LSL Replacement Program, all project costs can be included for funding; this includes associated engineering and administration costs, as well as the cost of developing a mandatory replacement ordinance, costs for Cultural Resources Management services, and other costs directly related to the project. Both public and private side replacements are eligible for funding, as well as inventory work. Stand-alone inventory projects are eligible but will only receive loan funding. Additional assistance for inventory work will be provided through the set-asides (see below).

All LSLs are eligible for removal, not just residential LSLs or those serving schools or childcare centers. This includes commercial and business-owned properties. This is a change from the previous versions of the LSL Replacement Program.

Note that galvanized service lines that are currently or have previously been downstream of lead components, brass service lines, and lead goosenecks, are considered LSLs for purposes of this program.

In municipalities where the entire LSL is owned by the customer, private side funding will be available for the entire LSL, not just the portion between the curb stop and the home as in previous versions of the LSL Replacement Program.

For private LSL replacements, municipalities will still be free to choose whether to develop a list of prequalified plumbers/contractors for homeowners to contract with directly, or whether to bid a municipal contract for the work.

In previous versions of the LSL Replacement Program, construction had to be completed in one calendar year. This restriction no longer applies, though for any project utilizing a prequalified list, we will not provide more than two years of funding at a time. In subsequent years, when utilizing a prequalified list for private LSL replacements, a new award will not be made unless at least 75% of any previous award has been expended.

FEDERAL REQUIREMENTS

As with any federal funding, the LSL funding involves additional federal requirements. All applicants receiving funds from the LSL capitalization grant will be treated as federal equivalency projects and will have to comply with the additional federal requirements detailed on our [website](#). In addition to these requirements, all LSL projects will be required to:

- Solicit for [disadvantaged businesses](#);
- Comply with [Davis-Bacon and Related Acts](#) (federal wage rates);
- Comply with new [Build America, Buy America \(BABA\) Act](#) procurement requirements (see [Adjustment Period Waiver for State Revolving Funds](#) and [Small Projects Waiver](#)). Note that any project that is exempt from BABA under the Adjustment Period or Small Projects waivers would instead be required to comply with [American Iron and Steel](#) procurement requirements.

LSL PRIORITY SCORING

Scoring and ranking of LSL projects for the purposes of allocating BIL LSL funding will be based on the criteria described below. The LSL-specific PERF (form 8700-383) must be submitted with the application. In addition, all projects will be scored under the regular SDWLP priority scoring system and will be ranked on the SDWLP Funding List utilizing that score. This ranking on the SDWLP Funding List will impact the allocation of general SDWLP PF which will be allocated after allocating the LSL PF.

When submitting a targeted project taking place in more than one census tract, weighting of the census tract level data may be done utilizing the number of LSLs to be replaced in each tract or by population. Applicants will be allowed to choose the method which is most advantageous to them. In order to be weighted by the number of LSLs in a census tract, locations and numbers of the LSLs to be replaced must be known at the time of application.

- **Project type:** Projects can receive points under either or both categories.
 - LSL Replacements = 150 points
 - Inventory work = 10 points
- **Poverty Percentage:** Using data from the American Community Survey (ACS), the percent of a municipality's population below 200% of the federal poverty level will generate points equal to the percentage, adjusted to the nearest whole number. This criterion uses 5-year estimates from the American Community Survey, table ID S1702 from data.census.gov.
- **Lowest Quintile Income:** Lowest quintile household income (LQI) points are awarded based on the municipality's LQI as a percent of the state LQI with the highest points assigned to the lowest LQI percentages. This criterion uses 5-year estimates from the ACS, table ID B19080 from data.census.gov.
 - 80% to less than 90% of Wisconsin LQI = 5 points
 - 70% to less than 80% of Wisconsin LQI = 10 points

- 60% to less than 70% of Wisconsin LQI = 15 points
 - Less than 60% of Wisconsin LQI = 20 points
- **Percent of Population Under Age 5:** Using data from the ACS, table ID DP05 from data.census.gov, the percent of a municipality's population under the age of five will generate points as follows:
 - Up to 2.5% = 10 points
 - Greater than 2.5% up to 5% = 15 points
 - Greater than 5% up to 7.5% = 20 points
 - Greater than 7.5% up to 10% = 25 points
 - Greater than 10% = 30 points
- **Mandatory Replacement Ordinance:** Municipalities will receive 10 points for having enacted an ordinance that requires each owner of a property that is serviced by a customer-side water service line containing lead to replace that customer-side water service line under certain conditions. Municipalities must provide documentation to demonstrate that a mandatory ordinance has been enacted.
- **Lead Sampling Results or Large System Optimization:** There are two ways to receive points in this category. If an applicant scores in more than one of the subcategories described below, the applicant will receive points for the highest scoring subcategory, not additive points for each subcategory they score in. The most that one applicant may score in this category is 50 points. For municipalities without their own water system, data for the municipality they receive their water from will be used for this section.
 - **90th Percentile Lead Levels:** Water systems whose 90th percentile result is 5 µg/L or greater are eligible for points in this category. Data for the last ten years will be provided by DNR's Drinking and Groundwater Program. This report will be provided at the same time data for the other metrics is obtained. The breakdowns are as follows:
 - Greater than 15 µg/L = 50 points (Greater than 15 µg/L is a lead action level exceedance.)
 - Greater than 10 µg/L up to 15 µg/L = 35 points
 - 5 µg/L up to 10 µg/L = 20 points
 - **Systems with Large Service Populations:** Water systems that serve a population of greater than 50,000 individuals are eligible for 35 points. Service population data will be provided by DNR's Drinking and Groundwater Program.
- **Whether all remaining LSLs can be removed by the submitted project:** Municipalities that are positioned to remove all their remaining LSLs with the submitted project will be awarded 20 points. This metric will be evaluated using the following criteria:
 - Whether a mandatory LSL replacement ordinance has been adopted.
 - The status of inventory efforts and reporting of inventory to the Public Service Commission (PSC).
 - The municipality's detailed plan for removing all LSLs.
- **Matching grants for residential replacements:** Points in this section will be awarded for projects where grant funds are being provided by the municipality to cover a portion of the private LSL replacement cost. These matching funds can come from utility ratepayer funds (with prior approval from the PSC), or from other municipal funds.
 - Covering 45-50% of private side cost with grant funds – 15 points
 - Covering 35-44% of private side cost with grant funds - 10 points
 - Covering 25-34% of private side cost with grant funds – 5 points
- **Municipal Population:** This will be used as a tiebreaker only, with the lower population receiving priority.

ALLOCATION OF FUNDS

The LSL capitalization grant requires exactly 49% of the funding to be awarded as PF with the remaining 51% of the funds to be utilized for set-asides and loans. Due to this need to balance the PF and loan/set-aside funding, we cannot guarantee an exact percentage of PF that will be awarded prior to having all LSL applications submitted.

Based on the Disadvantaged Criteria and PF methodology utilized for the SDWLP (see pages 13-15 of the [Final SFY 2023 SDWLP IUP](#)), the points under Table 7 will be broken into four tiers which will determine the maximum LSL PF amount an applicant qualifies for. Points will be calculated either for the entire municipality or for designated census tracts in the case of targeted projects.

- Municipalities/projects that receive 200-360 points will be eligible to receive up to 100% LSL PF for private side replacements.
- Municipalities/projects that receive 155-199 points will be eligible to receive up to 75% LSL PF for private side replacements.
- Municipalities/projects that receive 95-154 points will be eligible to receive up to 50% LSL PF for private side replacements.
- Municipalities/projects that receive 60-94 points will be eligible to receive up to 25% LSL PF for private side replacements.

LSL PF for private side replacements will be allocated first, utilizing the percentages above and the LSL-specific priority score ranking. If any LSL PF remains after this initial allocation, we will go back to the top of the ranked LSL list and allocate additional PF for public side LSL replacements. When allocating PF for public side replacements, the percentage of PF that a municipality qualifies for under Table 7 of the disadvantaged criteria and PF allocation methodology in the SDWLP IUP will be utilized.

Following the allocation of LSL PF, projects that scored high enough under the regular SDWLP scoring and ranking, and where the municipality qualifies as disadvantaged under the SDWLP criteria, will be eligible for general PF on project costs that are not being covered by LSL PF. This allocation of PF would be at the percentage determined under Table 7 of the disadvantaged criteria and PF allocation methodology in the SDWLP IUP, up to the municipal cap of \$1,500,000 per municipality. Note that the LSL PF is not subject to, or included in, the regular SDWLP PF cap.

Once all PF is allocated, both LSL and general, then, using the LSL score ranking, the LSL loan funds will be allocated for costs not covered by PF. Any private side replacement costs that did not receive PF will receive loan funds at 0.25%. Any public side replacement costs, inventory work, or other non-construction costs (such as engineering and administration) will receive loan funding at 1%. If project costs still remain once the LSL PF, general SDWLP PF, and LSL loan funds have been allocated, those costs will need to be funded with regular SDWLP loan funds at the normal SDWLP interest rate (55% or 33% of market rate – see the bottom of page 12 of the SDWLP IUP).

LOAN FUNDING FOR LSL REPLACEMENTS

Unlike previous versions of the LSL Replacement Program, very few, if any, applicants will receive 100% PF for their private side replacements. This means applicants should be prepared to cover some portion of private side replacement costs with loan funding.

For any applicant wishing to repay the loan portion of private side replacement funding with a revenue pledge (ratepayer funds), [prior approval from the PSC](#) is necessary. This funding must comply with *2017 Wisconsin Act 137* (§ 196.372, Wis. Stats.). Loan funding for private side replacements may also be covered by a general obligation pledge; this option does not need PSC approval, but the municipality must ensure that utility revenues are not subsequently used to repay the loan. Any questions regarding this should be directed to the PSC.

Loan funds for public side replacements, inventory work, and related project costs such as engineering can be repaid with utility ratepayer funds without being subject to the restrictions of Act 137.

Loan funding from the LSL capitalization grant will be made available at 0.25% interest for private side replacements and at 1% interest for public side replacements and any other project costs.

SET-ASIDES

Administration

The Safe Drinking Water Act (SDWA) allows up to 4% of the capitalization grant (\$1,932,760) to be used for administration. We will be utilizing \$290,570 for administration but reserve the right to utilize the remaining portion (\$1,642,190) at a future date.

State Program Management

The SDWA allows up to 10% of the capitalization grant (\$4,831,900) to be used for State Program Management activities. We will be utilizing \$1,320,910 for the positions and activities described below, but reserve the right to utilize the remaining portion (\$3,510,990) at a future date.

- Natural Resource Program Manager: Responsible for management and supervision of the Lead and Cooper Rule Section. The section manager is responsible for setting program policies and processes to properly and effectively implement the Lead and Copper Rule. Only time spent on lead activities will be charged to the Lead Service Line State Program Management set-aside.
- Lead Engineer (2): Responsible for coordinating and assisting in implementation of portions of the state Safe Drinking Water program, specifically the Lead and Copper Rule under the SDWA. Activities include evaluating public water system materials for sources of lead and copper; proper monitoring site types, location, and monitoring frequency; monitoring data; water quality parameters; treatment efficacy; and corrective actions to maintain compliance with the applicable statutes and administrative rules; interpretation of federal regulations and direct translation of federal rules into state codes; and statewide and interdepartmental coordination of program activities. Only time spent on lead activities will be charged to the Lead Service Line State Program Management set-aside.
- Lead Water Supply Specialist (3): Responsible for coordinating and assisting in implementation of portions of the state Safe Drinking Water program, specifically the Lead and Copper Rule under the SDWA. Activities include: evaluating public water system materials for sources of lead and copper; proper monitoring site types, location, and monitoring frequency; monitoring data; water quality parameters; treatment efficacy; and corrective actions to maintain compliance with the applicable statutes and administrative rules; interpretation of federal regulations and direct translation of federal rules into state codes; and statewide and interdepartmental coordination of program activities. Only time spent on lead activities will be charged to the Lead Service Line State Program Management set-aside.

The approximate staff budget for the 6 permanent positions is \$1,045,910 per year. Other program expenses are as follows:

- Four half-time limited term employees: Assisting permanent staff with the implementation of the Lead and Copper Rule. Only time spent on lead activities will be charged to the Lead Service Line State Program Management set-aside. Total \$122,186
- Local Health Department Outreach: The WDNR is contracting with local health departments to conduct outreach at local government events, schools, and daycares. The goal is to gain momentum to replace lead service lines with local governments by using a local voice (health departments) to share the benefits of lead service line removal. Total: \$250,000

Local Assistance

A state may provide assistance to a public water system as part of a capacity development strategy under Section 1420(c) of the SDWA. Fifteen percent of total capitalization grant funds may be requested for Local Assistance and

Other State Programs as long as no more than 10% is used for any one activity. We will be utilizing \$4,000,000 from the FFY 2022 Lead Service Line Capitalization Grant to provide LSL inventory technical assistance.

- Lead Service Line Inventory: The DNR is contracting with consultants to develop a service line inventory for public water systems. The contract will provide technical assistance to systems to complete this task and stay in compliance with the Lead and Copper Rule Revisions.

PUBLIC COMMENT PERIOD

This IUP amendment is being posted for a 30-day public comment period on November 16, 2022. Comments will be taken through Thursday, December 15, 2022. Comments should be submitted by email to:

Rebecca.Scott@Wisconsin.gov. A webinar discussing the new BIL-funded LSL Replacement Program will be held on Wednesday, December 7, 2022, at 1:00 pm. More information on the webinar will be made available and posted on our website prior to that date.