



May 17, 2024

Dr. Andrew Sawyers, Director
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Delegation of Management of Congressional Earmarks to States

Dear Dr. Sawyers:

Thank you for offering the opportunity to provide written comments, on behalf of the Clean Water and Drinking Water State Revolving Funds (SRFs), about the prospect of states administering and managing congressional earmarks. The SRFs consider this initial engagement to be the beginning of a conversation with Congress about the future of the SRF state-federal partnerships and the role of congressional earmarks in the nation's long-term strategy to fund water infrastructure that protects public health and the environment.

Being able to review and provide feedback on EPA's draft proposal would be a constructive next step in this important conversation. To that end, CIFA, on behalf of the SRFs, asks the U.S. Environmental Protection Agency (EPA) to share its proposed "legislative structure to allow states to implement and manage Community Project Funding/Congressionally Directed Spending grants" with states before submitting its report to Congress.

Allowing states to review and provide feedback on the draft proposal will further facilitate the conversation and help inform Congress, EPA and Governors how to approach management of congressional earmarks.

Thank you for your consideration.

Sincerely,

Angela Knecht
CIFA President

cc: U.S. Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies
U.S. House of Representatives Subcommittee on Interior, Environment, and Related Agencies

About CIFA

CIFA is a national not-for-profit organization that represents the Clean Water and Drinking Water State Revolving Funds (SRFs), the nation's premier programs for funding water infrastructure that protects public health and the environment.

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I. ASSESSMENT OF PERCEIVED DELAYS IN AWARDING CONGRESSIONAL EARMARKS

Over the last three years, Congress has diverted \$3.73 billion in federal funding from the SRF capitalization grants to pay for congressional earmarks. All projects funded by the SRF capitalization grants, including congressional earmarks, must comply with the myriad of federal mandates imposed by Congress over the last decade.¹

Today, federal mandates control various aspects of planning and construction of SRF water infrastructure projects, including selection of engineers, wages for construction workers, materials used in construction, and technologies used for treatment. Compliance with these federal mandates can be complex, confusing, time-consuming, and costly. Noncompliance can jeopardize needed federal funding for a project.

Congressionally imposed federal mandates on SRF funded projects may be the root cause of perceived delays in awarding congressional earmarks. Compliance with federal mandates is a process that takes time, technical assistance, and, often, paid professional expertise – all of which increases the cost of the water infrastructure project. Moreover, Congress must also recognize that communities need time to learn how to apply for federal funding and to work through the process and paperwork to comply with their congressionally imposed federal mandates.

If compliance with federal mandates is the root cause of perceived delays, transferring management of congressional earmarks from the U.S. Environmental Protection Agency (EPA) to states is unlikely to solve the underlying problem.

II. SRF CONCERNS ABOUT STATE MANAGEMENT OF CONGRESSIONAL EARMARKS

A. Maintaining the stability and reliability of the subsidized loan programs is the priority of the SRFs.

Over the last three years, Congress has diverted \$3.73 billion in annual federal funding from state projects to pay for congressional earmarks. Managing and mitigating the impact of these funding cuts is the SRFs' priority.

To keep projects on time, on track and on budget, the SRFs must continually:

- Modify policies and procedures to manage the project pipeline, such as capping the per project amount of loans, reducing eligibility for principal forgiveness/grants, and revising scoring for prioritizing projects.
- Develop and implement strategies to effectively communicate these programmatic changes to prospective borrowers, state lawmakers and policymakers, stakeholders and the public.
- Manage expectations for borrowers who have been diligently working through the SRF process but may not receive funding when anticipated.

¹ Appendix A

- Work with borrowers to revise their construction plans to allow for incremental funding, such as breaking projects into phases.
- Identify alternative sources of funding for borrowers, primarily small, rural and economically disadvantaged communities with limited options in the municipal market or from private lenders.
- Rework strategies for leveraging to meet the need for increased funding while controlling costs.

Because of this increased workload, many SRFs don't have the bandwidth to manage a new program for congressional earmarks. However, some SRFs may have an interest in managing projects co-funded with an SRF subsidized loan if the process is aligned to their program.

B. Providing adequate funding management of congressional earmarks will result in even deeper cuts to annual federal funding for SRF state priority projects.

In 2024, Congress diverted \$13.3 million in annual federal funding from the SRFs to pay for administration of congressional earmarks, exacerbating significant cuts to annual federal funding for state priority projects. Providing even minimal funding for administration of congressional earmarks will likely come at the expense of federal funding for state priority projects, which is a serious concern for the SRFs.

C. Lack of adequate funding will place a greater financial burden on the SRFs' administrative budgets.

To date, federal funding for management of congressional earmarks doesn't adequately cover the cost of administration and compliance during construction of a water infrastructure project which could be three to five years. Without adequate federal funding, SRFs may have to divert administrative funding from state priority projects to pay for administration of congressional earmarks.

D. In addition to diverting funding, congressional earmarks will likely divert state staff from state priority projects.

SRFs are concerned that pressure to expedite awards for congressional earmarks will force states to divert state staff from state priority projects. Diverting state staff, which are already stretched thin, will delay projects, especially in small, rural and economically challenged communities which require more time, attention and support from state staff.

Moreover, states don't have the flexibility or funding to hire, train and retain staff to manage an increased workload, especially one that can fluctuate significantly from year to year.

E. Congressional earmarks are "jumping to the front of the line" for federal funding without adequate vetting.

SRFs are concerned that congressional earmarks are receiving federal funding before being vetted for basic elements of project planning and development, such as engineering, environmental impacts, and permitting. Additionally, congressional earmarks haven't been vetted for their ability to comply with a myriad of federal

mandates, such as Build America, Buy America Act (BABAA) which significantly impacts overall design and construction of water infrastructure projects.

F. Managing congressional earmarks will require the development of an entirely new state program.

Because congressional earmarks are grants with different rules, requirements and schedules than SRF subsidized loans, these projects can't be seamlessly absorbed into most SRF programs. Instead, many states will need to develop a new state grant program to manage congressional earmarks; some states will need to enact new state laws to establish a new grant program. Establishing a new grant program could take up to two years; optimizing a new grant program could take another three to four years.

G. Requiring SRFs to manage congressional earmarks will further erode the SRF state-federal partnership, which is a hallmark of the SRFs.

Congress established the SRFs as a partnership with states. Congress provides a broad federal framework to achieve national objectives for safe and clean water but allows states to customize their individual programs to more efficiently and effectively achieve those objectives in communities with diverse environmental and affordability challenges.

Using the SRF capitalization grants to pay for congressional earmarks undermines the state prioritization process, which is a cornerstone of the programs. Continuing to displace state priority projects with congressional earmarks further diminishes this partnership.

H. EPA will use congressional earmarks to continue to federalize the SRFs.

In recent years, EPA has used "guidance," which it considers as having the weight of federal law and regulation, and "best practices," which are developed exclusively by agency staff, to compel SRFs to change policies, procedures and operations.

For example, EPA recently issued a policy that puts pressure on high-performing SRFs to overcommit funding or risk losing their capitalization grant. SRFs are concerned that EPA will apply this policy to congressional earmarks, which would further jeopardize annual federal funding for the SRFs.

I. Congressional earmarks are fundamentally transforming the SRFs from a sustainable, state-run subsidized loan program into a massive, one-size-fits-all federal grant program.

Many SRFs are concerned that congressional earmarks will continue to undermine the value of SRF subsidized loans, which can save as much as 75% in interest payments. The increase in federal mandates and diversion of funding to congressional earmarks (grants) is incrementally eroding the effectiveness of these fiscally responsible loan programs, which have successfully recycled billions in federal funding to finance water infrastructure projects that may never have built had the SRFs been established as a traditional federal grant program.

III. GENERAL RECOMMENDATIONS

A. Establish reasonable and realistic expectations for awarding congressional earmarks.

Because Congress uses the SRF capitalization grant to pay for congressional earmarks, these projects must comply with the myriad of federal mandates that Congress has imposed on SRF projects over the last decade. Compliance takes time. Additionally, like SRF loans, funding isn't provided up front; congressional earmarks reimburse eligible expenses, which can also impact the timeline for awarding federal funds.

Agreeing on the expectations for awards of congressional earmarks is critically important, regardless of whether EPA or states manage the process.

B. Improve transparency about the projects.

Comprehensive public reporting of the details of congressional earmarks, including full project descriptions, the status of applications, and outreach efforts to date, is essential for both project management and accountability.

To date, neither Congress nor EPA has provided detailed information about congressional earmarks to states. Without detailed information, Governors and State Legislatures will be unable to make informed decisions about accepting responsibility for managing one or more congressional earmarks in their state.

At a minimum, states need enough information to determine whether a project:

- Is eligible under their state program (congressional earmarks may be eligible under federal law but not eligible under a state program),
- Can be permitted,
- Provides a sustainable solution, and
- Is financially viable.

C. Improve transparency about obstacles.

Congress and EPA will also need to be more transparent about the known obstacles to awarding congressional earmarks. For example, Congress – without any public discussion or debate – waived federal mandates for competitive procurement for all congressional earmarks.² Unlike other federally funded projects, not one congressional earmark funded by the SRF capitalization grant over the last three years – nearly 2,000 projects – is required to competitively bid the goods and services used in their project.

Providing a clear and consistent process for waiving any federal mandate that presents an obstacle to the award of congressional earmarks, as well as SRF state priority projects, is essential for expediting awards.

² Consolidated Appropriations Act of 2024 ([H.R. 4366](#))

IV. RECOMMENDATIONS FOR EPA MANAGEMENT

A. Focus on improving the current management structure within EPA.

EPA provides managerial and programmatic oversight of 102 SRFs, which means the agency has the knowhow to efficiently and effectively administer a national program to manage congressional earmarks. Explaining how transferring management of congressional earmarks to states will improve the process is critically important.

B. Consolidate project management for congressional earmarks within EPA.

EPA currently manages congressional earmarks through the EPA Regions. However, congressional earmarks aren't evenly distributed across the EPA Regions. For example, Region 5 has more than six times the number of projects that Regions 7 and 8 have – 395 compared to 60 and 62 respectively.

Because of the extreme variability in the number of projects across the Regions and from year to year (Table A), EPA is unlikely to develop expertise within all the Regions to consistently improve the process.

Table A: Number of congressional earmarks by EPA Region.

EPA Region	Number of States	2022 Projects	2023 Projects	2024 Projects	Total Projects	Percent by Region
1	6	66	90	98	254	11%
2	2	57	76	118	251	11%
3	5	67	71	115	253	11%
4	7	58	105	146	309	14%
5	6	82	114	199	395	18%
6	5	32	57	81	170	8%
7	4	8	16	36	60	3%
8	6	10	20	32	62	3%
9	4	60	105	132	297	13%
10	4	44	61	65	170	8%
		484	715	1022	2221	

Consolidating project management of all congressional projects at Headquarters or within one or two EPA Regions may:

- Allow staff to be dedicated solely to management of congressional projects.
- Allow streamlining of operations and more efficient management of workflow.
- Expedite decision-making and determinations for compliance, such as with American Iron and Steel and Build America, Buy America.

V. CONSIDERATIONS FOR SRF MANAGEMENT

A. Allow SRFs to select the congressional earmarks to manage.

Very few SRFs have expressed an interest in managing all congressional earmarks. However, some SRFs have expressed an interest in managing congressional earmarks

that are co-funded with an SRF subsidized loan. Taking an all-or-nothing approach for managing congressional earmarks will be a deterrent for SRF involvement in the process.

B. Require congressional earmarks managed by the SRFs to follow the SRF process.

Requiring congressional earmarks to follow the state SRF process will allow projects to be more seamlessly absorbed into each unique state programs, such as:

- Use the state application process, instead of applying to SAM.gov for a unique entity identifier (UEI) then applying to grant.gov for the funding.
- Allow use of principal forgiveness, as well as grants, to reduce paperwork and processes.

C. Establish a simple process for SRFs to access federal funding to pay for congressional earmarks.

Developing a simple process for SRFs to easily access federal funding is essential for states to manage congressional earmarks. Burdensome processes and excessive paperwork will deter SRFs from managing congressional earmarks, even those that are co-funded.

D. Adequately fund management of congressional earmarks.

Ensuring compliance with the myriad of federal requirements for congressional earmarks and SRF projects is a costly and labor-intensive effort. The cost of compliance can vary by project and doesn't correlate to the amount of funding.

Previously, Congress provided SRFs with 3% of the amount of the congressional earmark to perform narrowly defined responsibilities, such as conduct site inspections. However, an administrative set-aside of this amount may not be adequate to perform these limited duties now.

States can use up to 4% of annual federal funding for SRF program administration. However, many states receive state funding or must charge fees to cover the full cost of SRF program administration and project management.

Covering the full cost of managing a congressional earmark through completion of construction would require a minimum of \$90,000 and up to 9% of the amount of the congressional earmark. Administration of congressional earmarks should be funded in addition to the SRFs, not deducted from the SRF capitalization grants.

VI. RECOMMENDATIONS FOR RECIPIENTS

A. Establish a deadline for recipients to apply for congressional earmarks.

Under the current structure, applicants can take as long as they want to apply for a congressional earmark. Requiring recipients to apply within six months of receiving a congressional earmark will accelerate the process from the start.

B. Fund technical assistance for congressional earmarks.

Recipients of congressional earmarks may need technical assistance to navigate the paperwork and processes to comply with federal mandates. Providing funding for professional services to assist with compliance may be necessary to award congressional earmarks.

Again, technical assistance for congressional earmarks should be funded in addition to the SRFs, not at the expense of state priority projects.

VII. RECOMMENDATIONS FOR STREAMLINING

A. Ending use of the SRF capitalization grants to fund congressional earmarks will streamline compliance.

Using a different source of funding for congressional earmarks will eliminate SRF federal mandates, which would reduce the paperwork and process to demonstrate compliance before an award can be made.

B. Waive federal mandates on SRF projects and congressional earmarks in small and rural communities.

SRF projects and congressional earmarks in communities with fewer than 10,000 people often lack the professional capacity to ensure compliance with federal mandates and require more intensive support than projects in larger communities. Waiving federal mandates for these projects could expedite the award of funding.

C. Reduce duplication of environmental reviews.

According to EPA's guidance, recipients of congressional earmarks are required to comply with both National Environmental Protection Act (NEPA) and State Environmental Review Process (SERP), which is a NEPA-equivalent process used by the SRFs for more than three decades to evaluate the environmental impacts of projects. Requiring both environmental reviews is duplicative and consumes strained staff time.

Allowing EPA to accept the State Environmental Review Process (SERP) in lieu of the National Environmental Protection Act (NEPA) will streamline the process while maintaining protection for the environment.

Appendix A: Congressional Federal Mandates

- Davis Bacon: Mandates federal prevailing wages – individually established for each of the nation’s 3,143 counties – are paid to construction workers.
- America Iron and Steel (AIS): Mandates procurement and use of iron and steel made in America.
- Building America, Buy America Act (BABAA): Mandates use of iron, steel, construction materials and manufactured products that meet procurement requirements for made in America.
- Cost-Benefit Analysis (Green Certification): Mandates certification that the project maximizes water and energy conservation, regardless of the size or type of the project.
- Fiscal Sustainability Plan: Mandates an inventory of assets, a funding plan to maintain assets, and a certification that the plan maximizes water and energy conservation, regardless of the size or type of the project.
- Engineering Services: Mandates the use of the federal procurement process to select engineers and engineering firms.