

The EPA Awarded WIIN Act Funds Consistent with Nearly All Guidance and Improved Its Processes to Increase Transparency of Funding Decisions

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Abbreviations

EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
OW	Office of Water
OGWDW	Office of Ground Water and Drinking Water
Pub. L.	Public Law
RFA	Request for Applications
SDWA	Safe Drinking Water Act
WIIN Act	Water Infrastructure Improvements for the Nation Act

Cover Image

A backhoe and worker digging to expose water service lines. (EPA photo)

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OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

September 25, 2024

MEMORANDUM

SUBJECT: The EPA Awarded WIIN Act Funds Consistent with Nearly All Guidance and Improved Its Processes to Increase Transparency of Funding Decisions
Report No. 24-P-0068

FROM: Sean W. O'Donnell, Inspector General *Sean W O'Donnell*

TO: Bruno Pigott, Acting Assistant Administrator
Office of Water

The U.S. Environmental Protection Agency Office of Inspector General initiated this audit to determine whether the EPA distributed Water Infrastructure Improvements for the Nation Act, or WIIN Act, funds to replace lead service lines in disadvantaged communities in adherence with applicable guidance. The WIIN Act, Pub. L. 114-322, was enacted in 2016.

This audit supports these EPA mission-related efforts:

- Operating efficiently and effectively.
- Ensuring clean and safe water.

This audit addresses these top EPA management challenges:

- Integrating and implementing environmental justice.
- Managing grants, contracts, and data systems.

We determined that the EPA awarded WIIN Act funds consistent with nearly all guidance and improved Agency processes to increase the transparency of funding decisions. We identified two documentation issues that the EPA experienced before it awarded funds. Agency staff reported to us that they had addressed one of these issues with additional controls and a new oversight structure within the Office of Water, or the OW, and the other through a new standard operating procedure within the Office of Grants and Debarment.

You are not required to respond to this report because this report makes no recommendations. If you submit a response, however, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epaoig.gov.

Background

The WIIN Act amended various sections of the Safe Drinking Water Act, or SDWA, and included provisions to address, support, and improve America's water infrastructure. The WIIN Act established new grant programs to help public water systems in small, underserved, and disadvantaged communities achieve compliance with drinking water regulations and reduce lead levels in drinking water through infrastructure or treatment improvements.

WIIN Act section 2104, "Assistance for Small and Disadvantaged Communities," amended SDWA to add section 1459A, which established a noncompetitive grant program that awards funding to states, territories, and tribes to support drinking water projects and activities in underserved, small, and disadvantaged communities. The section defines **underserved community** as "a political subdivision of a State that, as determined by the Administrator, has an inadequate system for obtaining drinking water." A **small community** is one that has a population fewer than 10,000 individuals and that has been determined by the administrator to not have the capacity to incur debt sufficient to finance a project to comply with SDWA. A **disadvantaged community**, for the purposes of section 2104, is a community that has been determined by a state to be a disadvantaged community under SDWA section 1452(d)(3) or to be a community that may become a disadvantaged community as a result of carrying out a section 2104 project or activity.

Grant funds provided under section 2104 of the WIIN Act assist public water systems in complying with SDWA. Eligible grant activities include household water-quality testing; infrastructure projects, such as service line replacements; and assistance to increase water system technical, managerial, and financial capacity. The EPA allocates the grant funds to states based on factors such as the portion of the population that is below the poverty line, the number of small water systems, and the number of water systems in underserved communities. The OW issues an allotment memorandum to EPA regions that indicates the allotments by state and the steps and timeline leading to state grant awards. The EPA regions award grants to states, that, in turn, identify and fund eligible projects and monitor each project's progress to completion.

WIIN Act section 2105, "Reducing Lead in Drinking Water," amended SDWA to add section 1459B, which established a competitive grant program that awards funding for lead-reduction projects. Section 2105 requires that the EPA prioritize disadvantaged communities proposing to carry out lead-reduction projects at public and other water systems with a history of high-lead levels or to address lead in drinking water at schools and childcare facilities. Under section 2105, as with section 2104, a disadvantaged community is a community that a state has determined is a disadvantaged community under SDWA section 1452(d)(3).

The competitive award process for section 2105 grants begins with a Request for Applications, or RFA. Eligible entities submit their applications to the EPA. The Agency evaluates these applications based on various criteria, including the extent and quality of the approach to reduce the lead in drinking water

and the ability to proceed expeditiously. After the application period closes, a panel of reviewers independently evaluates, rates, and scores eligible applications in accordance with the RFA. Finally, an EPA selection official chooses the applications to fund based on the reviewers' rankings and available funding.

Congress made the first WIIN Act appropriations available in fiscal year 2018, and the Agency established the WIIN Act section 2104 and 2105 grant programs in fiscal years 2019 and 2020, respectively. Congress appropriated \$162.8 million for fiscal years 2018 through 2021 to implement the WIIN Act section 2104 and 2105 grant programs. The Agency awarded \$123 million for the section 2104 and 2105 grant programs. Of the \$123 million, \$17.7 million, or roughly 14 percent, funded the replacement of lead service lines.

EPA WIIN Act Grant Award Oversight

In 2019, the Office of Ground Water and Drinking Water, or the OGWDW, issued the *Small, Underserved, and Disadvantaged Communities Grant Program Grant Implementation Document*, which is also known as the grant implementation document. This document provides states with guidance on how to apply for WIIN Act section 2104 funding. The OGWDW also issued a separate grant-implementation document, titled *Assistance for Small and Disadvantaged Communities Tribal Drinking Water Grant Program Information*, for tribes to clarify the grant application process and requirements for regional EPA staff and prospective applicants.

Two other documents help guide the application process. The first, EPA Order 5700.5A1, *Policy for Competition of Assistance Agreements*, establishes the policy and requirements for the competition of EPA assistance agreements. According to this order, all competitive grant applications must be evaluated through a fair and impartial competitive process that is based only on the criteria stated in the announcement. The second, EPA Order 5700.6 A2 CHG 2, *Policy on Compliance, Review and Monitoring*, establishes standards for the oversight, monitoring, and closeout of EPA assistance agreements.

All grant applicants are required to submit EPA Form 4700-4, *Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance*. This form collects information that enables the EPA's regional Offices of Civil Rights to determine whether applicants are developing projects, programs, and activities on a nondiscriminatory basis. The EPA's *Standard Operating Procedures for Preaward Compliance Review of EPA Form 4700-4*, effective May 1, 2020, describes actions that Agency staff take when reviewing and processing this form.

Responsible Office

The EPA OGWDW is within the OW. The OGWDW, along with the EPA's regional drinking water branches, oversees state implementation of SDWA, as amended by the WIIN Act, including the section 2104 and 2105 grant programs.

Additionally, the OGWDW is responsible for developing and implementing national primary drinking water standards and treatment techniques to protect public health by limiting the levels of contaminants in drinking water. The OGWDW also supports efforts to build resiliency and to increase security of water and wastewater utilities and provides information about drinking water quality to the public. It is also responsible for the oversight and funding of state drinking water programs and source water protection programs. These programs aim to protect public health and to assist drinking water systems, including those in small, rural, and tribal communities, in building capacity or responding to emergencies and disasters that may impact the nation's water and wastewater infrastructure. From fiscal years 2020 through 2022, the EPA awarded \$123 million for section 2104 and 2105 WIIN Act grant programs. In fiscal year 2023, the EPA announced an additional \$50 million of funding under section 2104 and estimated \$47 million under section 2105.

Scope and Methodology

We conducted this performance audit from November 2022 to May 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed the internal controls necessary to satisfy our audit objective.¹ In particular, we assessed the internal control components—as outlined in the U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*—significant to our audit objective. Any internal control deficiencies we found are discussed in this report. Because our audit was limited to the internal control components deemed significant to our audit objective, it may not have disclosed all internal control deficiencies that may have existed at the time of the audit.

To answer our objective, we reviewed WIIN Act sections 2104 and 2105, SDWA sections 1459A and 1459B, and grant program information from the EPA's Next Generation Grants System. We met with staff and management from the OGWDW and EPA Regions 1 and 5 to obtain an understanding of the WIIN Act grant programs. Of the 82 section 2104 grants awarded starting in fiscal year 2020, we reviewed the two that funded lead service line replacements. EPA staff told us that there were an additional 17 tribal projects implemented through interagency agreements with the Indian Health Service during this time, but we did not include these in our sample because they are managed by the Indian Health Service. We did not analyze the EPA's methodology for allocating section 2104 funds to states. For the ten grants awarded under section 2105, we reviewed the three that funded lead service line

¹ An entity designs, implements, and operates internal controls to achieve its objectives related to operations, reporting, and compliance. The U.S. Government Accountability Office sets internal control standards for federal entities in GAO-14-704G, *Standards for Internal Control in the Federal Government*, issued September 10, 2014.

replacements. EPA staff told us that there were an additional ten tribal projects under section 2105 that are managed by the Indian Health Service.

Impediments and Scope Limitations

During our audit, we encountered challenges in obtaining grant data from the OGWDW, which led us to extend our fieldwork. As we noted in a September 2023 memo to the Office of Water, the EPA Office of Ground Water and Drinking Water could not readily provide us with information on the amount of grant funds awarded in fiscal year 2018 through 2021 under the EPA's Small, Underserved, and Disadvantaged Communities and Reducing Lead in Drinking Water grant programs pursuant to WIIN Act sections 2104 and 2105, respectively. This led to an extended period of data collection that involved several rounds of follow-up and clarification between us and the OGWDW to verify that we had the necessary data to answer our audit objective. Eventually the EPA regional offices identified the section 2104 projects that support lead service line replacement, which we reviewed as part of this audit and are presented in our findings.

Results

The EPA adhered to nearly all applicable guidance for the award of the five grants to replace lead service lines in disadvantaged communities under sections 2104 and 2105 of the WIIN Act. The \$17.7 million that was awarded for these grants led to the reported replacement of over 4,100 lead service lines, which could reduce the public's exposure to lead in these communities. We identified two documentation issues that the Agency had addressed independent of our analysis. Agency staff had not (1) fully documented internal decisions pertaining to the selection of section 2105 applicants and (2) consistently confirmed that section 2104 and 2105 applicants had certified that they develop projects, programs, and activities on a nondiscriminatory basis in EPA Form 4700-4. Over a two-year period ending in 2023, the OW implemented additional controls with a new oversight structure for competitive grant applications. The Office of Grants and Debarment also implemented a new procedure for confirming applicants' certification to develop projects, programs, and activities on a nondiscriminatory basis, as submitted via EPA Form 4700-4. These improvements will increase (1) transparency and completeness of future WIIN Act grant decisions and (2) compliance with requirements, which will affect additional funds from fiscal year 2023 of \$50 million under section 2104 and estimated \$47 million under section 2105.

For the purpose of our analysis, the WIIN Act grant application and award process is presented in four phases: Announcement, Application, Review, and Award and Distribution.

Phase One: Announcement

In this phase, the EPA announced the available WIIN Act section 2104 and 2105 funding separately. The Agency implemented the grant programs as noncompetitive for section 2104 and competitive for section 2105. The OW issued an allotment memorandum and the grant implementation document for

the section 2104 and an RFA for the section 2105 grant availability.² These documents included information about the application and award process, such as eligibility criteria, items to submit with the application package, and Agency review and award information. We verified that the section 2104 allotment memorandum was consistent with the requirements in the grant implementation document. We also verified that the RFA under section 2105 complied with EPA Order 5700.5A1.

Phase Two: Application

During Phase Two, EPA staff obtained applications for grants under both sections after the publication of the allotment memorandum and the RFA. The application documents required for grants under both sections were similar. All applicants had to meet eligibility requirements to receive funding and submit a work plan, budget, and other mandatory forms. Additionally, section 2105 grant applications for lead service line replacement were required to contain specific descriptions of these activities and other documents that illustrated, for example, the readiness to proceed with construction and other activities since the program was administered competitively. We verified that the Agency followed the application requirements listed in the grant implementation document. For section 2105 applications, we verified that they met the requirements of the RFA and EPA Order 5700.5A1.

Phase Three: Review

Phase Three involved a detailed review of the applications and their supporting documentation by staff from the OGWDW and the EPA's regional Offices of Civil Rights. We analyzed applicants' documentation and eligibility based on the application criteria and confirmed that all applicants were eligible for funding. For example, we verified that the grant applicants had detailed their eligibility as disadvantaged communities seeking funds to replace lead service lines and included other required information. During this phase, Agency staff also reviewed all mandatory documents and forms, such as work plans, and budgets, as well as cost-share requirements.

We identified two documentation issues in this phase. Agency staff did not (1) fully document internal decisions pertaining to the selection of grantees and (2) confirm the applicants' assurance via EPA Form 4700-4 that they would develop projects, programs, and activities on a nondiscriminatory basis.

Document Internal Decisions Pertaining to Selection

Because the section 2105 grant program is competitive, the Agency convened a panel of three staff members and one chairperson to review the applications and assign scores to each application based on the criteria established in the RFA. While the EPA developed internal guidance to ensure consistency among the reviewers, we determined that changes to final scores, while permitted by review protocols, were not documented by the panelists for four of 13 applications. These changes affected the final ranking for the top four applicants by breaking a tie score between the third- and fourth-place applicants.

² U.S. EPA, Final Allotments of FY 2018 and FY 2019 Appropriations for the Assistance to Small and Disadvantaged Communities Grants, Authorized under Section 2104 of the Water Infrastructure Improvements for the Nation Act (April 29, 2019).

The role of the panel chairperson was to ensure that the competition process was well documented and compliant with EPA Order 5700.5A1, *Policy for Competition of Assistance Agreements*, and consistent with the terms of the RFA. At the time of the fiscal year 2020 selection, no single manager was responsible for overseeing the panelists and panel chairperson. Fully documenting score changes could have increased transparency in the selection process because the Agency could only fund up to three grant awards based on available funding.

Confirm the Applicants' Certification of Compliance

Our analysis determined that regional grants specialists did not confirm the applicants' certification to develop projects, programs, and activities on a nondiscriminatory basis, as submitted via EPA Form 4700-4. According to the EPA's *Standard Operating Procedures for Preaward Compliance Review of EPA Form 4700-4*, the regional grants specialists had to submit these forms to their regional Office of Civil Rights for review. If the grants specialist did not receive a response within ten business days, the grant specialist was to assume that there were no issues with the applicant's EPA Form 4700-4 and continue processing the grant award. However, without written confirmation from the Office of Civil Rights, regional grants managers did not have assurance that applicants were developing projects, programs, and activities on a nondiscriminatory basis.

To address the documentation issues noted above, the Agency implemented additional controls in 2022 and 2023 that should result in a more complete and transparent review process. To improve documentation of internal decisions pertaining to the selection of grantees, staff working on OGWDW competitions must now document their evaluation of each application in a common spreadsheet. This allows the panel chairperson to better review the panelists' analyses of the applications and more easily track scores and score changes. In addition, the OGWDW realigned its Drinking Water Protection and Grants Branch under a new supervisor who could provide consistent oversight and effective administration of grant programs. These improvements, completed in December 2023, affect nontribal competitive and noncompetitive programs. Additionally, in January 2023, the Office of Grants and Debarment issued a new procedure requiring that EPA Form 4700-4 be submitted to the regional Office of Civil Rights for review and signature and then be added to the grant file before the award.

Phase Four: Award and Distribution

During Phase Four, WIIN Act funding, which can support a wide range of drinking water activities, including lead service line replacements, was awarded and distributed. From fiscal years 2020 through 2022, the EPA has awarded \$123 million through WIIN Act sections 2104 and 2105. Of this amount, \$17.7 million, or approximately 14 percent, was awarded to five grant recipients to replace lead service lines. These recipients reported replacing over 4,100 lead service lines to reduce the public's exposure to lead in small, underserved, and disadvantaged communities.

Conclusions

The EPA awarded WIIN Act funds consistent with nearly all guidance and improved Agency processes to increase transparency of funding decisions. We identified two documentation issues in the grant application review phase, but the Agency had addressed both of these issues. The OW addressed one competition evaluation documentation issue with additional controls and a new oversight structure for competitive grant applications. The Office of Grants and Debarment addressed the other issue with new procedures and guidance for confirming whether applicants are developing projects, programs, and activities on a nondiscriminatory basis.

These WIIN Act grants provided essential funding to small, underserved, and disadvantaged communities for a variety of drinking water activities, including replacing lead service lines. The oversight improvements that the EPA implemented will address the gaps that we identified and contribute to the transparency and completeness of the review process. The impact of these changes will affect an additional \$50 million of funding under section 2104 and estimated \$47 million under section 2105. Based on the results of our analysis and recent improvements to the application review process, we do not have any recommendations.

cc: Michael S. Regan, Administrator

Janet McCabe, Deputy Administrator

Dan Utech, Chief of Staff, Office of the Administrator

Wesley J. Carpenter, Deputy Chief of Staff for Management, Office of the Administrator

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