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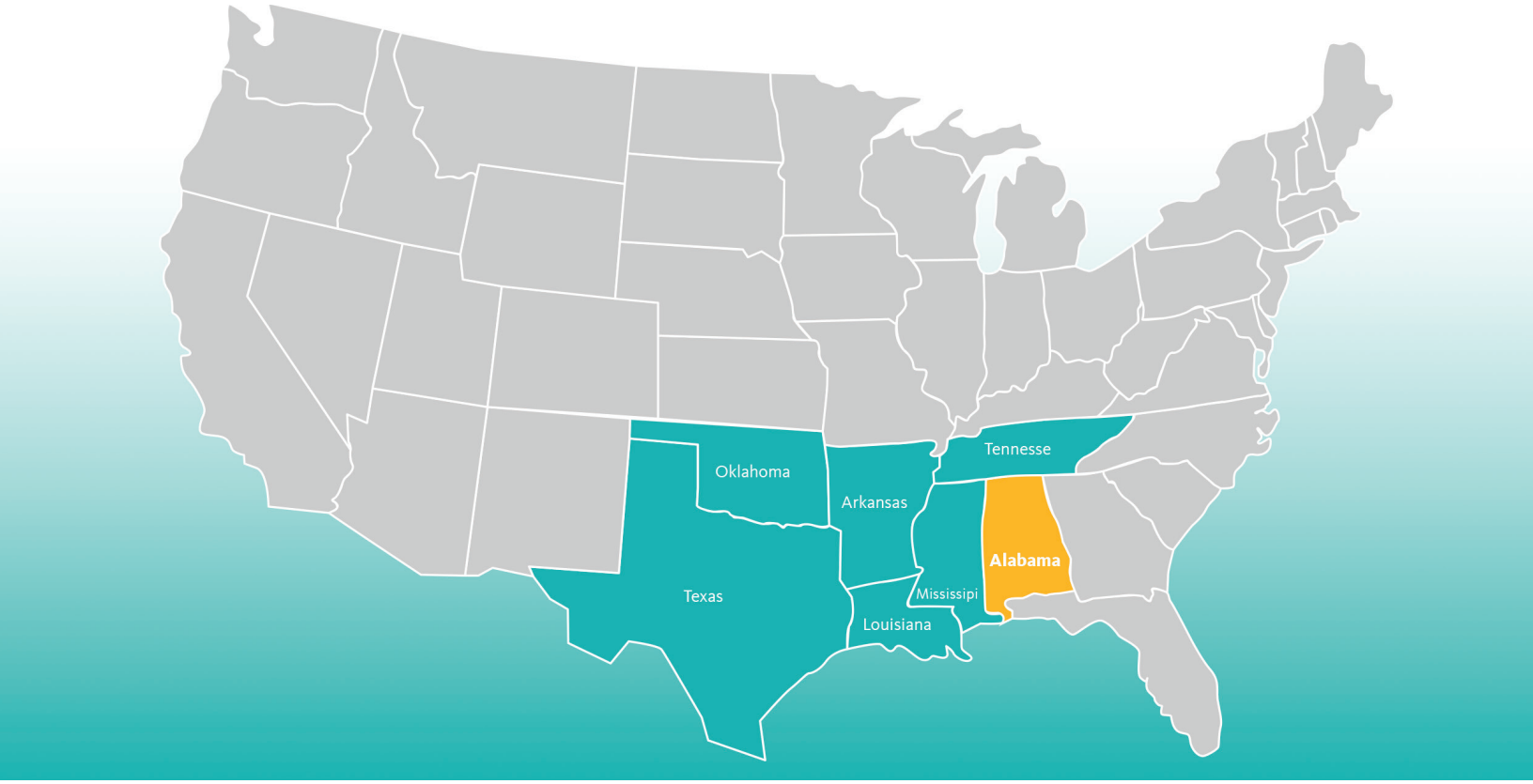

Key Policy Recommendations for Alabama's State Revolving Fund

Preface

The State of Water Infrastructure

Water infrastructure in the United States is aging and in need of replacement, and many systems are already failing. Estimates suggest $1.25 trillion ($625 billion for Drinking Water infrastructure and $630 billion for Clean Water infrastructure) is needed over the next 20 years to invest in wastewater, stormwater, and drinking water systems. Inadequate investments in water infrastructure has a significant negative impact on the health and well-being of communities, and disproportionately impacts low-income communities and communities of color.

The Bipartisan Infrastructure Law (**BIL**), passed in November of 2021, was the single largest federal investment in water infrastructure to date. Of the $55 billion to be administered by the Environmental Protection Agency (**EPA**), $43 billion is being distributed through the Clean Water State Revolving Fund (**CWSRF**) and the Drinking Water State Revolving Fund (**DWSRF**) over Federal Fiscal Year (**FFY**) 2022-2026. Although 49% of these funds must be distributed to "disadvantaged communities" as grants or forgivable loans (rather than loans that need to be repaid), communities with the greatest need still face several barriers in accessing these funds. Interventions to address these barriers include reforms to State Revolving Fund (**SRF**) policies that determine how SRF funds are allocated to communities within each state.

Why and How This Project Came to Be

In early 2023, PolicyLink started its three-year "Southern State Revolving Fund (**SRF**) Analysis and Advocacy Project" to help ensure equitable implementation of BIL SRF funds and base SRF programs in the South. In focusing on the South, we recognized that the racial and economic disparity in clean and affordable water is particularly pronounced there and that there was a need for strong community-based advocacy.

This project consists of two main phases:

- **Phase I: Analyses of DWSRF and CWSRF Across Seven Southern States** In early 2023, PolicyLink partnered with the Environmental Policy Innovation Center (**EPIC**) to train and support policy analysts across seven southern states (Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas) to conduct equity analyses of each state's Clean Water and Drinking Water State Revolving Fund. These analyses are being used to inform advocacy in Years 2 (2024) and 3 (2025) of the project.
- **Phase II: Community-Based-Organization (CBO) Led Advocacy Across Four States** Of the seven states, PolicyLink selected four states—Alabama, Louisiana, Tennessee, and Texas—for Phase II (supporting CBO-led SRF Advocacy). These represent two states from EPA Region 4 (Tennessee and Alabama) and two states from EPA Region 6 (Louisiana and Texas). PolicyLink selected a cohort of 16 CBOs (4 CBOs per state) to undergo SRF Advocacy training (administered by River Network) and supports them in their state and regional SRF advocacy efforts.

This document is part of the larger series of SRF program analyses (Phase I deliverables) developed by individual consultants, with guidance from PolicyLink and the Environmental Policy Innovation Center (EPIC).

To learn more about the project and/or to access other material related to the state analyses, please see the project site.

Acknowledgments

For the first phase of this project, we want to thank our partner, Janet Pritchard, from the Environmental Policy Innovation Center (EPIC), for providing a template for conducting the equity analyses, training our consultants, and reviewing each of the state outputs. We also want to thank our individual consultants who conducted analyses of SRF programs within their states:

- Alabama: Victoria Miller and Cindy Lowry, Alabama Rivers Alliance
- Arkansas: EPIC
- Louisiana: Rebecca Malpass, The Water Collaborative of Greater New Orleans
- Mississippi: Dr. Christine Curtis, Grow Where You're Planted
- Oklahoma: EPIC
- Tennessee: Grace Stranch and Anne Passino, Harpeth Conservancy
- Texas: Danielle Goshen, National Wildlife Federation

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Abbreviations Sheet

ADEM - Alabama Department of Environmental Management
ADPH - Alabama Department of Public Health
ARPA - American Rescue Plan Act
BIL - Bipartisan Infrastructure Law (also the Infrastructure Investment in Jobs Act)
CWA - Clean Water Act
CWNS - Clean Watershed Needs Survey
CWSRF - Clean Water State Revolving Fund
Disadvantaged community - per the requirements of the DWSRF, states are required to explain how they define "disadvantaged community" and must use this definition to identify applicants serving DACs. If a community is identified as a DAC, they may receive additional benefits for their projects, like additional subsidization in the form of principal forgiveness.
DWINSA - Drinking Water Infrastructure Needs Survey & Assessment
DWSRF - Drinking Water State Revolving Fund
EC - Emerging Contaminants, usually refers to BIL funds distributed for projects aimed at mitigating emerging contaminants from drinking water or wastewater
EPA - Environmental Protection Agency
FFY - Federal Fiscal Year
GPR - Green Projects Reserve
IUP - Intended Use Plan
LSLR - Lead Service Line Replacement, usually refers to BIL funds distributed for projects to identify and remove lead service lines from drinking water systems
PPL - Project Priority List
SFY - State Fiscal Year
SRF - State Revolving Fund
SDWA - Safe Drinking Water Act

Introduction

Alabama's State Revolving Fund (SRF) program must grow its capacity and improve accessibility to meet the state's water infrastructure needs now and in the future. The historic funding opportunity offered by the Bipartisan Infrastructure Law (BIL) allows Alabama the flexibility to implement program adjustments and grow its SRF capacity, and this should be taken advantage of.

These recommendations are the product of the Southern States SRF Analysis project and complement the full Alabama SRF policy analysis and recommendations memo. Thanks to PolicyLink and EPIC for providing the resources for the Alabama Rivers Alliance to pursue SRF analysis and recommendations.

Summary of Recommendations

(1) Establish a route for SRFs to be able to finance infrastructure improvements in communities lacking a public body and/or individual homeowners traditionally unable to access the SRF.
(2) Allow alternative financing terms and requirements for communities receiving additional subsidization and offer more prioritization to disadvantaged communities.
(3) Develop robust water infrastructure support structures for Alabama utilities by utilizing set-asides to fund activities such as state program management, small systems training, and technical assistance.
(4) Use funding availability to create long-term action plans for closing water and wastewater infrastructure gaps in Alabama.

Key Change #1:

To support communities facing water issues and struggling to access SRF financing, take steps to expand SRF eligibility and provide additional subsidies for failing private systems.

Current Policy:
Alabama's SRF program restricts SRF eligibility to public entities.[1] Based on the Alabama Department of Environmental Management's (ADEM) definition of public entities, it is unclear how communities lacking a public entity can access water infrastructure upgrades or how individual households can finance sanitation projects.

It is unclear how the SRF can be applied to water quality issues in communities lacking a public entity. To keep local options open to fit local ownership and utility structure needs, Alabama should expand its SRF eligibility to be able to meet the water needs of disadvantaged communities lacking a public entity.

The Issue:
Many Alabamians live in rural communities, located outside the centralized service areas and must rely on private drinking water wells or septic systems. Nearly half of households in the Alabama Black Belt are not served by centralized sewer services.[2] Rural communities that are fortunate enough to have centralized services may face financial strain due to small customer bases and may be unable to support the cost of upgrades. This problem is exacerbated in low-income rural communities, where rate adjustments required to receive SRF loans place a greater burden on households.

Need for Reform:
Federal laws allow for SRFs to be awarded to more types of entities than is allowed in Alabama's SRF program.[3] The BIL emphasized financing decentralized wastewater projects due to the pervasiveness of these systems in the domestic wastewater landscape, and the propensity to contribute to water quality impairment if left in disrepair or not maintained. Clean Water State Revolving Fund (CWSRF) regulations already allow for decentralized projects to be funded,[4] yet these projects are not funded in practice due to the issue of an eligible public entity. These communities can reduce the cost of water improvements by collectivizing to approach the SRF and manage their water resources moving forward but often need assistance to

organize and build the structure. One potential solution could be to establish regional management entities or an alternative organization to process SRF loans, construct infrastructure improvement, and manage/own water infrastructure resources afterward.

Recommendation:
Expand SRF eligibility or establish an SRF program to fund water improvements in unincorporated communities and/or individual households with failing private systems. Offer specific advice for this category of applicants to be successful with SRF.

Key Change #2:

Allow alternative financing terms and requirements for communities receiving additional subsidization and offer more prioritization to disadvantaged communities.

Current Policy:
Communities meeting certain criteria (known as affordability criteria on the CWSRF side and disadvantaged communities on the DWSRF side) are offered additional subsidization on SRF loans in the form of principal forgiveness. These projects are offered traditional financing terms and interest rates offered to other SRF projects in Alabama. Before knowing if they qualify for additional subsidization, SRF applicants in Alabama must submit financial audits and preliminary engineering designs with their preapplication. SRF applicants must also submit their project priority rank. Alabama's regulations add challenges for SRF applicants by requiring them to agree to specific conditions before receiving funding, including the periodic adjustment of user fees and charges to ensure loan repayment.[5]

Need for Reform:
Communities without existing grantwriting or engineering experience may struggle to fulfill the SRF preapplication requirements. These communities may also find it difficult to complete SRF projects without technical assistance or guidance from the state. Before investing time and financial resources in the application process, communities are often unaware of whether they qualify for additional subsidization to pay for infrastructure upgrades. Offering a reduced interest rate or extended financial terms on the SRF loan can allow for a reduced monthly payment for communities otherwise unable to afford an SRF project.

Additionally, Alabama's regulatory requirement to periodically adjust user fees can create challenges for the communities trying to improve water infrastructure without burdening their ratepayers. Understandably, a utility will need to repay the SRF loan if not being awarded additional subsidization. However, if individual ratepayers will experience hardship from a rate increase caused by financing a project, then ADEM should explore revenue stream alternatives that would not further burden already impoverished ratepayers.

Recommendation:
Alabama should consider offering alternative financing options to communities receiving additional subsidization, and the flexibility to do so exists under their current regulations. Alabama should also consider removing the requirement to adjust user fees and explore alternative SRF repayment options.[6] Regulatory changes at ADEM are made by rulemaking petitions, which are reviewed and voted on by ADEM's Environmental Management Commission. Additionally, ADEM should create a preapplication worksheet for SRF applicants to calculate their eligibility, with clarity on data sources and how to access data.

Key Change #3:

Develop robust water infrastructure support structures for Alabama utilities by increasing set-aside activities such as state program management, small systems training, and technical assistance.

Current Policy:
Alabama significantly underutilized its ability to set aside amounts from the SRF capitalization grants to proactively provide technical assistance to SRF applicants and support utilities. Federal law allows up to 31% of the capitalization grant to be set aside, and the national average DWSRF set-aside usage rate from 2017 to 2020 was 22% while comparatively ADEM only withheld 7.1% in 2022.[7] States are allowed to use up to 6% of their federal capitalization grants, 4% for administration and general technical assistance, and an additional 2% to provide technical assistance to small communities. The newly allowed 2% technical assistance set-aside has been taken by ADEM since FY2023. While Alabama does typically use the allowable amount for administrative support in the CWSRF and DWSRF, no detailed plan for these activities was provided in the annual Intended Use Plans (IUPs).

Need for Reform:
Communities can struggle to access the SRF and carry out infrastructure improvements without additional support, guidance, or assistance after funds are made available. ADEM can create an expectation in Alabama that the SRF is for more than just project funding but also a resource to assist with applications, provide technical assistance, support statewide management with supervision and training resources, and create a clean water infrastructure support system for when issues arise. Chronic wastewater issues in Alabama can be exacerbated by the unavailability of sewage operators. ADEM could support the clean water workforce of Alabama by creating workforce development programs allowable through clean water set-aside activities.

Recommendation:
Alabama has the flexibility to use more set-asides under its regulatory structure, so the Department would only need to update its IUPs and agency practices to be able to offer and deliver more technical assistance. Planning and design awards from technical assistance set-asides for disadvantaged communities would help to support a project pipeline and enable reliability for them to rely on the SRFs for water funding. Further education of ADEM and SRF decision-makers about the usefulness of technical assistance and its benefits for efficient loan delivery could persuade Alabama to build more robust set-aside activities. ADEM should also develop detailed activity work plans for existing and future set-asides that detail the kinds of technical assistance to be made available, who is eligible to receive assistance, and how communities can access technical assistance.

Key Change #4:

Take advantage of the present funding availability to create long-term action plans for closing water and wastewater infrastructure gaps in Alabama.

Current Policy:
There are currently no statewide longterm action plans for how Alabama plans to use the SRFs for future water availability and maintaining functioning wastewater infrastructure. ADEM has also elected not to set-aside any of the BIL-supplemental funds intended for emerging contaminants or lead service line removal for planning or inventory purposes. As stated earlier, Alabama has existing flexibility to conduct set-aside activities under current regulations.

Need for Reform:
Alabama is facing an uncertain water infrastructure future on many fronts, including the mitigation of emerging contaminants like PFAS from drinking water, sustainable solid waste management options (septage and biosolids), and climate resiliency. With the limited BIL-supplemental funding available to Alabama for addressing lead service lines and emerging contaminants, initiating the development of statewide action plans through set aside activities using the available funds could maximize their impact across the entire state— instead of limiting it to a few projects.

Recommendation:
ADEM should consider using its flexibility to set aside funding from the BIL-supplemental funds to do statewide planning around emerging contaminants and future water availability. Accomplishing this would simply require ADEM to set aside more funds, develop a plan for these set-aside activities, and detail their set-aside activities on the next IUPs.

Other Recommendations for Alabama's SRF

- Assign more priority points to projects seeking to serve disadvantaged communities, decentralized projects, or build green infrastructure.
- Support communities through the SRF process and project completion after being placed on an IUP with offers of technical assistance.
- Adjust CWSRF affordability criteria from county-level data to census tracts served by projects to be more specific for projects not seeking to serve an entire county.
- Consider leveraging capitalization grants to increase the amount of project assistance available each year and catch up on immense needs statewide.
- Merge the sub-funding streams available from the BIL with the existing CWSRF and DWSRF funds respectively to clarify how projects are prioritized for the various sub-streams of funding.
- Create more incentives to solicit green infrastructure projects.
- Consider reserving or investing a portion of funds for future construction cost increases on current projects. This could eliminate the need for applicants to re-apply to complete existing projects and take up SRF capacity.

Conclusion

With the current funding availability, now is the time to grow Alabama's SRF into the powerhouse mechanism it could be to manage water infrastructure, invest in clean water for our future, and promote a healthy environment. The recommended next steps for advocacy in Alabama to improve the SRF are to (1) establish a route for SRFs to finance infrastructure improvements in communities lacking a public body and/or individual homeowners traditionally unable to access the SRF by clarifying eligible SRF recipients, (2) allow more communities to access the SRF by permitting alternative financial requirements and offering more prioritization for disadvantaged communities, (3) develop robust water infrastructure support structures for Alabama utilities through technical assistance and set-aside programs, and (4) use the available funding to create long-term action plans for closing water and wastewater infrastructure gaps in Alabama. As the BIL encourages, Alabama should take advantage of the funding available now to analyze its current program and begin making changes to cement the SRF's position as the low-cost infrastructure investment source for all communities.

Notes

1. Ala. Admin. Code 335-11-1.01(s) & 335-11-2-.01(p)
2. Wilson, Tristan. The Role of Centralized Wastewater Treatment in the Rural Alabama Black Belt. Master's thesis, 2023.
3. 40 CFR 35.3520(a)(1).
4. Ala. Admin Code 335-11-1-.03(1)(d)
5. Ala. Admin Code r. 335-11-2-.09(10)(e) (CWSRF); Ala. Admin Code r. 335-11-1-.09(10)(e)
6. "Financing Options for Nontraditional Eligibilities in the Clean Water State Revolving Fund Programs" EPA May 2017, available at epa.gov/sites/default/files/2017-05/documents/financing_options_for_nontraditional_eligibilities_final.pdf
7. "The EPA Could Improve Its Review of DWSRF Programs to Help States Assist Disadvantaged Communities" EPA Audit Report, available at epa.gov/system/files/documents/2023-07/_epaoig_20230711_23-P-0022_2.pdf

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