



Milwaukee Water Commons

Comments on May 2021 DRAFT of State of Wisconsin Safe Drinking Water Loan Program Intended Use Plan for FFY 2021 Funds for the SFY 2022 Funding Cycle

June 18, 2021

Milwaukee Water Commons, on its own behalf and on behalf of Milwaukee's Coalition on Lead Emergency (COLE) and other signatories listed below, offers the following comments on the [May 2021 draft of the State of Wisconsin Safe Drinking Water Loan Program Intended Use Plan \(IUP\) for FFY 2021 Funds for the SFY 2022 Funding Cycle](#). These comments consist of 4 sections. **Section A** explains the interest of Milwaukee Water Commons and COLE in the IUP. **Section B** provides background information about the devastating and persistent problem of lead exposure through drinking water in Milwaukee and the failure of Wisconsin's Safe Drinking Water Loan Program to adequately address this problem, and contextualizes this failure within a broader understanding of water infrastructure financing in the United States. **Section C** itemizes specific substantive concerns with the draft IUP, and **section D** offers recommendations for how the process of developing the annual IUP for the SDWLP should be improved.

A. Lead Drinking Water Infrastructure in Milwaukee

Milwaukee sits along the shores of Lake Michigan and at the confluence of three rivers. For centuries inhabitants have relied on our waters for fishing, commerce, transportation, recreation, brewing, and world-class drinking water. Water is foundational to the city and the lives of our people are rooted in water. And yet, today, water gathered from Lake Michigan, some of the best water in the country (at its source), is putting Milwaukee's most vulnerable populations at risk for lead poisoning because it flows to their homes through lead pipes. The impact of lead exposure in our drinking water is a public health risk that only our public officials and policy makers can resolve.

[Milwaukee Water Commons](#) is a cross-city network that fosters connection, collaboration, and broad community leadership on behalf of our common waters. We promote stewardship, equitable access to, and shared decision-making for our common waters, including drinking water. Milwaukee Water Commons is a member of the [Coalition on Lead Emergency \(COLE\)](#). COLE originated as a community initiative supported by the Dominican Center focused on the Amani Neighborhood in the central city of Milwaukee. COLE has built a coalition concerned with broad aspects of lead in water including workforce development, education, outreach, water filtration, and policy advocacy efforts. COLE has recruited a working collective of nonprofits, faith groups, environmentalists, educators, doctors, and community members who have come together with the mission to create a sustainable lead-safe environment in their neighborhood and the city of Milwaukee.

Milwaukee has over 70,000 lead service lines (LSLs). Milwaukee Water Works, the local drinking water utility, estimates that it will cost \$750 million to replace all the LSLs in the city. Given available funding, LSLs have been replaced at a rate of fewer than 1,000 per year (3,440 from 2017-2020).¹ Even at the rate of 1,000 per year, thousands of Milwaukee homes may continue to be served by lead service lines well into the end of this century.

B. The Story of Water Infrastructure Funding Reflects Broader Patterns of Racial and Socioeconomic Inequity that must be Recognized and Remedied

The pace of replacement of lead service lines is constrained by the amount of funding available. Because Milwaukee relies primarily on loans from Wisconsin's Safe Drinking Water Loan Program (SDWLP) to finance the replacement of its aging water mains and the utility-owned portion of adjacent lead service lines, replacement of the City's lead service lines is largely determined by the degree to which Milwaukee water ratepayers can bear the burden of repaying these loans without raising water rates to unaffordable levels. In many cases, the same households most at risk of lead exposure from drinking water also struggle to make ends meet financially.² According to the U.S. EPA's [EJ Screening Tool](#), fifty-one percent of Milwaukee's population lives in households with a total income below 200% of the poverty level. Therefore, increased grant funding – rather than more loan financing – is needed to address the urgent need to replace lead service lines in Milwaukee.

This need is urgent. In 2019, approximately 1745 children were identified as lead-poisoned in Milwaukee at the 5 mcg/dL blood lead level. The crisis of lead exposure through Milwaukee's drinking water has been well-documented over several decades. The severe and largely irreversible lifetime impacts of lead poisoning are also well understood.³ Likewise, many studies have tabulated the significant detrimental economic and social impacts of lead poisoning on families, neighborhoods, and society at large.⁴ And yet this problem continues to threaten the health and well-being of Milwaukee's communities, undermining their chances for a happy and successful life. In certain census tracts, 1 in 3 children were found to be lead poisoned.⁵

These neighborhoods, which were historically subject to redlining, are also highly segregated. Broad patterns of racial and socioeconomic inequity in Milwaukee and throughout the US have been reinforced by the way funding mechanisms for water infrastructure have changed over time. During the 20th century, small and large cities and towns benefited from extensive government investments in public water systems. Over the second half of the century, city water systems were extended to serve middle- and upper-income white households moving to the suburbs, while Black households and other communities of color were held back in older urban neighborhoods by systematically racist housing and

¹ Milwaukee Water Works, *Lead and Water*, <https://city.milwaukee.gov/water/WaterQuality/LeadandWater>.

² Lynch, Emily E., and Meier, Helen C. S. (2020), *The intersectional effect of poverty, home ownership, and racial/ethnic composition on mean childhood blood lead levels in Milwaukee County neighborhoods*, PLoS One. 2020 Jun 19;15(6):e0234995. doi: 10.1371/journal.pone.0234995. PMID: 32559243; PMCID: PMC7304591, available at <https://pubmed.ncbi.nlm.nih.gov/32559243/>.

³ See, e.g., <https://www.cdc.gov/niosh/topics/lead/health.html>.

⁴ See, e.g., Pew Center on the States (2010), *Cutting Lead Poisoning and Public Costs*, Partnership for America's Economic Success, Issue Brief #14, available at https://www.pewtrusts.org/~media/assets/2010/02/22/063_10_paes-costs-of-lead-poisoning-brief_web.pdf.

⁵ <https://www.dhs.wisconsin.gov/epht/index.htm>.

employment practices. Not only was the expansion of urban water systems key to enabling “white flight,” but this expansion was largely paid for by the urban water ratepayers who were left behind with aging water systems built several decades earlier and increasingly in need of repair and upgrades.

As these needs grew more pressing, however, the mechanisms through which water infrastructure is funded also shifted dramatically to place responsibility for maintaining, repairing, and upgrading water infrastructure almost entirely on each locality’s water ratepayers. To the extent that federal funds are still expended towards water infrastructure, this has been increasingly in the form of loans issued through state revolving funds such as Wisconsin’s SDWLP. These loans ultimately need to be repaid by local ratepayers.

The current over-reliance on local ratepayers to bear the burden of funding water infrastructure compounds other existing inequities. Formerly redlined neighborhoods are still predominantly under-resourced, face historical barriers to a healthy environment, and are majority people of color. The inability of these communities to pay for much-needed infrastructure maintenance and upgrades means that their needs remain unmet, subjecting these already-vulnerable communities to greater risks of water insecurity and related health, social, and economic impacts. Racist inequities are baked into the way our current water infrastructure financing mechanisms function. Wisconsin policymakers must first recognize these inequities, and then remedy them. Policies pertaining to how much principal forgiveness for SDWLP loans is made available and how principal forgiveness is allocated – policies determined by the annual IUP for the SDWLP – can help remedy these historic and continuing inequities.

C. Recommended Changes to Policies Proposed in the May 2021 Draft Intended Use Plan

We offer the following substantive recommendation to improve Wisconsin’s Intended Use Plan for FFY 2021 Funds for the 2022 Funding Cycle and make the IUP more responsive to the needs outlined above.

1. Increase the amount of SDWLP funds provided as Principal Forgiveness

The FFY 2021 federal appropriation for the Drinking Water state revolving funds, Public Law (P.L. 116-260), requires states to award 14% of the federal capitalization grant as additional subsidy. In addition, recent changes to the Safe Drinking Water Act require a minimum of 6% and up to 35% to be awarded as additional subsidy to disadvantaged communities.

In the draft IUP, the Wisconsin Department of Natural Resources (WDNR) has opted to add \$1,420,120, approximately 7.5% of the capitalization grant, to the 14% required by P.L. 116-260 to be provided as additional subsidy (\$2,624,860) for a total of **\$4,044,980** from the capitalization grant. Wisconsin provides all additional subsidy as principal forgiveness (PF).

Federal law allows states to make up to 35% of the capitalization grant available for additional subsidy in addition to the 14% required by P.L. 116-220. However, WDNR has only made an additional 7.5% of the capitalization amount available for PF. **Given the urgent need for water infrastructure upgrades in Wisconsin, including the replacement of LSLs in Milwaukee, coupled with low-income ratepayers’ limited ability to repay SDWLP loans, WDNR should strive to make the maximum amount of PF available for the SFY 2022 funding cycle: 49% of the capitalization grant (14% + 35%) for a total of \$9,187,010.**

While the state is also required to manage the SDWLP in a fiscally sound manner in order to maintain the integrity of the fund, WDNR has not provided any findings in the IUP indicating that increasing the percentage of Wisconsin’s FFY 2021 capitalization grant made available for PF would jeopardize the long-term integrity of the SDWLP.

2. Revise criteria for scoring eligibility for Principal Forgiveness to award more points to communities in which a significant portion of households face financial hardship.

To determine a municipality’s eligibility for principal forgiveness, the DNR proposes in the draft IUP to score applicants on the basis of population and Median Householder Income (MHI) in comparison to the state MHI, in accordance with the following tables:

Table 1	
Points	Population
0	10,000+
5	8,500–9,999
10	5,000–8,499
15	3,000–4,999
20	2,000–2,999
25	1,500–1,999
30	1,000–1,499
35	500–999
40	250–499

Table 2	
Points	MHI Percent
0	126%+
5	116% to <126%
10	106% to <116%
15	101% to <106%
20	96% to <101%
25	91% to <96%
30	86% to <91%
40	81% to <86%
50	76% to <81%
60	71% to <76%
70	66% to <71%
85	61% to <66%
100	<61%

Table 3	
Total Score	PF Percent
0-49	No PF
50-79	30%
80-99	45%
100-165	60%

Awarding points to very small communities recognizes that such communities must distribute the cost of needed water infrastructure projects across a very small ratepayer base, and this can pose financial hardship for small communities with low or moderate household incomes. Some small communities that are also relatively affluent, however, may be better able to pay for their water infrastructure needs, notwithstanding their small ratepayer base, compared to larger communities facing greater community-wide financial hardship. The formula for determining PF should place greater relative weight on financial factors than on population size. Communities that are both small and financially distressed will still benefit from a system that weights both.

Metrics based on median households income (MHI) have been broadly criticized because measuring affordability at the average income level of a community does not indicate if the large majority of residents can afford water service, or would be able to afford it if water bills are increased to repay SDWLP loans procured to pay for essential water infrastructure projects such as replacement of lead service lines.⁶ Wisconsin might instead consider adopting a set of criteria more directly focused on affordability at the household level. The ALICE (Asset Limited, Incomed Constrained, Employed) metrics,

⁶ See, e.g., Metropolitan Planning Council (2020). *Water Affordability in Northeastern Illinois: Addressing Water Equity in a Time of Rising Costs*, available at <https://iiseagrant.org/publications/water-affordability-in-northeastern-illinois/>

for example, consider essential cost-of-living factors (housing, child care, food, transportation, health care, and basic technology) as well as household size and income to determine a ‘household survival budget’ for various regions in Wisconsin, and assess the percentage of households that cannot afford these basic needs.⁷

An alternative approach would be to simply supplement Tables 1 and 2 above with additional points awarded to municipalities with a high poverty index. For example, points could be awarded in relation to the percent of a municipality’s population below 200% of the poverty level, similar to the criterium introduced to prioritize applicants for the Private Side LSL Replacement Program in the May 2021 draft IUP.

3. Add Principal Forgiveness points for municipalities with declining populations.

While small communities can face unique hardships due to the need to spread infrastructure costs across a small ratepayer base, communities with decreasing population also face unique hardships due to aging water systems that are oversized for their needs. This is the case for Milwaukee and other Great Lakes cities in the post-industrial era. Not only is much of Milwaukee’s water infrastructure 50-100+ years old and in need of repair or replacement, but this system was built and expanded to support a larger population than resides in Milwaukee today, as well as a water-dependent industrial base which no longer exists in the city on the same scale that it did historically. Because it is not easy to simply “downsize” a municipal water system in such circumstances, Milwaukee ratepayers bear the burden of maintaining a system that is too large for current needs. This can overstretch ratepayers for water systems serving a declining population and/or declining industrial base in a similar fashion to the way ratepayers in small communities are overstretched. Therefore, PF points should be awarded for municipalities that have experienced significant population and/or industrial decline over the decades since their water systems were built.

4. Add Principal Forgiveness points for projects that deliver triple-bottom-line benefits

WDNR should consider adding points to its PF scoring system for proposed projects that would deliver triple-bottom-line benefits, particularly projects that enable socioeconomic benefits to be realized during project execution by incorporating paid job training and transitional jobs for local low-income residents that have historically had difficulty accessing good paying water infrastructure jobs. By increasing economic opportunities in the communities facing the need for water infrastructure repairs, this would help to offset the cost borne by these communities for the repairs.

5. Rank eligibility for Principal Forgiveness in accordance with PF scoring, not the Project Evaluation and Ranking Formula (PERF)

Under the PF scoring system set out in the draft IUP, Milwaukee would receive 70 points because its MHI is between 66% and 71% of the state MHI (Table 2), making Milwaukee eligible to receive 30% of its SDWLP loan as principle forgiveness (Table 3). A similar PF Scoring system was adopted in Wisconsin’s IUP for FFY 2020 Funds for the SFY 2021 Funding Cycle. Under that IUP, Milwaukee received 70 PF points for a proposed project to replace water mains including the public side of 1,000 adjacent LSLs,

⁷ See United Ways of Wisconsin (2020), ALICE in Wisconsin, a Financial Hardship Study, available at <https://www.unitedforalice.org/wisconsin>

and therefore was eligible for PF to cover 30% of the project costs, which would amount to \$7,479,898 in PF.

In fact, however, Milwaukee received \$0 in PF for the SFY 2021 Funding Cycle. This is because the IUP ranked eligibility for PF on the basis of Project Evaluation and Ranking Formula (PERF) scores rather than municipalities' PF scores, and projects ranked above Milwaukee used up all the available PF funds. Had payment of PF been ranked on the basis of PF scores, Milwaukee would have received PF up to the maximum \$500,000 allowed per municipality under the IUP for the SFY 2021 Funding Cycle.

The Project Evaluation and Ranking Formula for ranking SDWLP projects for SDWLP loans is set out in Wis Admin Code NR § 166.23 and cannot be varied through the IUP. There is nothing in NR § 166 or other federal or state law, however, that requires WDNR to incorporate PERF rankings for the purpose of allocating principal forgiveness.

While the PERF prioritizes projects for eligibility for SDWLP loans and includes within it points attributed to financial need, the PERF is not as carefully tailored to determining which SDWLP-eligible projects are most in need of PF on the basis of a community's financial hardship compared to the PF scoring. Therefore, the IUP should rank projects for payment of PF in accordance with PF scores, not PERF scores.

6. Eliminate the \$500,000 cap on the amount of principle forgiveness each municipality can receive per year.

The draft IUP imposes a \$500,000 cap on the amount of PF any municipality can receive per year. This rule clearly discriminates against larger municipalities that are likely to require larger, more costly projects to maintain their water systems to protect public health, including the replacement of large numbers of LSLs, as is the case in Milwaukee. Smaller communities are already favored in a number of ways by SDWLP. For example, Wis Admin Code NR § 166.13 provides that only municipalities with populations below 10,000 are eligible for a more steeply discounted interest rate on SDWLP loans. Smaller municipalities are also favored in the financial need criteria included within the PERF in addition to receive PF points on the basis of their size. Where, notwithstanding all of these elements favoring smaller municipalities, a larger municipality demonstrates that it should be prioritized for PF funds, this should not be undercut by an arbitrary cap on the amount of PF it can receive.

7. Do not award prioritization points for the Private LSL Replacement Program on the basis of whether a municipality can remove all remaining LSLs in the upcoming season.

The draft IUP introduces new prioritization criteria for principle forgiveness available through the Private LSL Replacement Program. These include:

- Points equivalent to the percent of a municipality's population below 200% of the federal poverty level
- Up to 25 points in relation to the percent of population under age 5
- 10 points for having a Mandatory Replacement Ordinance requiring property owners to replace their private side LSL when the public side of the LSL is replaced by the municipality.
- 30 points for exceedance of NR 809 action levels for lead in drinking water.
- 20 points if all remaining LSLs in the municipality can be removed in the upcoming season.

Like the \$500,000 cap on PF under the regular SDWLP, awarding points on the basis of whether a municipality can remove all remaining LSLs within the upcoming year inherently discriminates against larger systems with extensive amounts of LSLs, such as Milwaukee. With 70,000 LSLs still in place, it will likely be a decade before these are all removed, even under a very ambitious replacement schedule. Indeed, Milwaukee could remove 10,000 LSLs annually – likely more than any other city in Wisconsin – and still be disadvantaged in relation to eligibility for PF from the Private LSL Replacement Program, simply due to the sheer scale of the LSL problem Milwaukee must confront. Therefore, this rule should be eliminated.

8. Consider revising the rule awarding points for exceedance of NR 809 action levels.

The first three factors for prioritizing PF from the Private LSL Replacement Program are well tailored to reduce the risk of exposure to lead from drinking water for those most at risk. At first glance, it might be thought that the rule awarding points for exceedance of NR 809 action levels protects those most at risk. However, awarding PF points for exceedance of NR 809 action levels could also be construed as penalizing utilities that have implemented corrosion control measure to mitigate the risk of lead exposure from drinking water where lead pipes are present, in favor of utilities that have failed to implement protective measures pending the removal of LSLs. Therefore, this rule should be modified to award points for the exceedance of NR 809 action levels only where protective measures recommended in NR 809 have been implemented, but the water system still exceeds NR 809 action levels.

D. Recommendations to Improve the Process of Reviewing Draft Intended Use Plans, to Enable Greater Public Participation

Currently, the draft IUP for the SDWLP is published on the WDNR's website, and stakeholders who want to question or influence the draft must submit written comments within 21 days of the publication date. Policies determined by the IUP, particularly in relation to the amount of principal forgiveness made available and how PF is allocated, have enormous ramifications for the public health and economic well-being of Wisconsin communities and their residents. These policies also have potential to either remedy or exacerbate long-standing inequities in how funding for infrastructure needs are allocated. Therefore, it is important that impacted communities and other stakeholders understand what is at stake in the IUP, and how they can influence it.

Accordingly, we recommend that the process of reviewing the draft annual IUP for the SDWLP should be modified as follows:

1. The draft IUP should be publicized more widely and its on-line publication should be followed by a webinar that is publicly accessible, both as a live event and recorded.

The policies contained in the IUP are set within a larger context and framework for water infrastructure funding and can be difficult for community members – who may have much at stake in relation to policies determined by the IUP – to understand. Even for public interest advocates who specialize in matters related to the IUP, it is helpful to learn from policymakers the data and reasoning that informed the policies proposed in the draft IUP. A webinar, including opportunities for questions and answers, would provide information to enable stakeholders to understand the draft IUP, the reasoning behind it, and its likely impacts.

As a supplement to a publicly accessible webinar, the WDNR should also invite stakeholders to email questions about the draft IUP and compile these into a Q&A sheet made available on its website.

2. In addition to written comments, the WDNR should also invite comments on the draft IUP at a public hearing or hearings.

At least one public hearing should be convened on-line, to enable residents throughout the state to attend without the need to travel. In addition, at least one in-person public hearing should be offered. Public hearings allow for community members and other stakeholders to not only offer their own comments on the draft, but also to hear and respond to comments offered by others at the hearing.

Recordings of public hearings held on the draft IUP should be made available on the WDNR website.

3. A wider window should be allowed for written comments, following learning, analysis, and organizing developed through the webinar and public hearing.

Written comments are likely to be richer, more appropriate, and more insightful following the webinar and public hearing.

Written comments received on the draft IUP should be published on the WDNR website, together with the WDNR response to them.

Conclusion

Thank you for the opportunity to submit comments on the draft IUP. We look forward to your response and hope to see our recommendations reflected in the final IUP.

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