

Congress of the United States

Washington, DC 20515

September 11, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

We are writing with concerns regarding the reduction in lead service line replacement (LSLR) funding awarded to Massachusetts, and to urge the Environmental Protection Agency (EPA) to reevaluate the methodology used to analyze the need for safe drinking water in each state across the country.

The Drinking Water State Revolving Loan Fund (DWSRF) was established in 1996 by amendments to the 1974 Safe Drinking Water Act (SDWA) in order to “help water systems and states to achieve the health protection objectives of the SDWA” via Congressionally-appropriated funding that is then awarded to the states by EPA.¹ States use these funds to provide loans and other assistance to water systems to fund infrastructure projects, and then “[a]s water systems repay their loans, the repayments and interest flow back into the dedicated revolving fund,” from which they can then be used to fund additional projects.² Project goals can include “improving drinking water treatment...fixing leaky or old pipes (water distribution)... improving source of water supply...replacing or constructing finished water storage tanks...[and] other infrastructure projects needed to protect public health.”³

The Bipartisan Infrastructure Law (BIL) passed in November 2021 included federal funding specifically for lead service line replacement (LSLR), which is crucial to remove the “estimated 6 to 10 million lead service lines in cities and towns across the country, many of which are in low-income neighborhoods and communities of color.”⁴ Through the DWSRF, the BIL invests \$15 billion towards LSLR, with 49 percent of funds provided as grants or principal forgiveness loans and 51 percent as low-interest loans.⁵ Massachusetts was projected to receive \$65.8 million in fiscal years (FY) 2022 and 2023.⁶ For FY 2022, Massachusetts was indeed

¹ U.S. Environmental Protection Agency, “Overview of the Safe Drinking Water Act,” <https://www.epa.gov/sdwa/overview-safe-drinking-water-act>; U.S. Environmental Protection Agency, “How the Drinking Water State Revolving Fund Works,” December 7, 2022, <https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works>.

² U.S. Environmental Protection Agency, “How the Drinking Water State Revolving Fund Works,” <https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works>.

³ *Id.*

⁴ U.S. Environmental Protection Agency, “Funding for Lead Service Line Replacement,” August 16, 2023, <https://www.epa.gov/ground-water-and-drinking-water/funding-lead-service-line-replacement>.

⁵ *Id.*

awarded \$65,783,000 for the DWSRF Lead Service Line Replacement through BIL.⁷ However, this was reduced by about \$32 million in FY23, with the Commonwealth receiving just \$33,700,000.⁸ This reduced funding was the result of an update to EPA’s methodology for determining how funds are distributed.⁹

The SDWA mandates that “EPA examine the needs for infrastructure improvements and maintenance at public water systems in the United States,” via conducting a Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) every four years.¹⁰ This survey is used to “determine the financial needs of the nation’s drinking water infrastructure over the next twenty years,” and “[guide] EPA’s distribution of annual funding to states through the Drinking Water State Revolving Fund,” including the unprecedented funding provided by the Bipartisan Infrastructure Law (BIL).¹¹ The 7th DWINSA was completed in 2021, and for the first time — given that the America's Water Infrastructure Act (AWIA) of 2018 mandated EPA to evaluate and include the cost to replace lead service lines in the DWINSA — included data on lead service lines for the state, in order to “employ a separate lead service line allotment formula for the BIL DWSRF Lead Service Line Replacement appropriation.”¹² EPA has stated that the 7th DWINSA “provides the best available national and state-level projections of materials and service line counts,” but this is disputed by the Commonwealth.¹³ While the goal of better understanding each state’s lead service line problem is certainly an important step in ensuring people across the country can access clean, safe drinking water, most water systems are still in

⁶ The White House, “President Biden’s Bipartisan Infrastructure Law is Delivering in Massachusetts,” February 2023, p. 2, <https://www.whitehouse.gov/wp-content/uploads/2023/02/Massachusetts-Fact-Sheet-E3.pdf>.

⁷ U.S. Environmental Protection Agency, Memorandum on “Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law,” March 8, 2022, p. 30, https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf.

⁸ U.S. Environmental Protection Agency, Memorandum on “FY 2023 Allotments for the Drinking Water State Revolving Fund based on the Seventh Drinking Water Infrastructure Needs Survey and Assessment,” April 3, 2023, p. 6, https://www.epa.gov/system/files/documents/2023-04/Final_FY23%20DWSRF%20Allotment%20Memo%20and%20Attachments_April%202023.pdf.

⁹ Massachusetts Clean Water Trust, “Talking Points Addressing the DWSRF Lead Service Line Allotment Adjustments,” June 2023, p. 1, [On File with Office of Senator Elizabeth Warren].

¹⁰ U.S. Environmental Protection Agency, Fact Sheet on “7th Drinking Water Infrastructure Needs Survey and Assessment,” April 2023, p. 1, https://www.epa.gov/system/files/documents/2023-04/Final_DWINSA%20Public%20Factsheet%204.4.23.pdf.

¹¹ U.S. Environmental Protection Agency, Frequently Asked Questions on “7th Drinking Water Infrastructure Needs Survey and Assessment,” April 2023, p. 1, https://www.epa.gov/system/files/documents/2023-04/Final_FAQ_DWINSA_4.4.23.v1.pdf.

¹² U.S. Environmental Protection Agency, Fact Sheet on “7th Drinking Water Infrastructure Needs Survey and Assessment Fact Sheet,” April 2023, p. 1 and 3, https://www.epa.gov/system/files/documents/2023-04/Final_DWINSA%20Public%20Factsheet%204.4.23.pdf; U.S. Environmental Protection Agency, Frequently Asked Questions on “7th Drinking Water Infrastructure Needs Survey and Assessment FAQ,” April 2023, p. 1-2, https://www.epa.gov/system/files/documents/2023-04/Final_FAQ_DWINSA_4.4.23.v1.pdf; U.S. Environmental Protection Agency, “Drinking Water Infrastructure Needs Survey and Assessment 7th Report to Congress,” September 2023, p. 17, https://www.epa.gov/system/files/documents/2023-09/Seventh%20DWINSA_September2023_Final.pdf.

¹³ U.S. Environmental Protection Agency, Frequently Asked Questions on “7th Drinking Water Infrastructure Needs Survey and Assessment FAQ,” April 2023, p. 2, https://www.epa.gov/system/files/documents/2023-04/Final_FAQ_DWINSA_4.4.23.v1.pdf; Massachusetts Clean Water Trust, “Talking Points Addressing the DWSRF Lead Service Line Allotment Adjustments,” June 2023, [On File with Office of Senator Elizabeth Warren].

the process of developing service line inventories, as EPA itself notes.¹⁴ Furthermore, the service line questionnaire in the DWINSA was optional, such that only 75 percent of water systems responded, and those that did respond had to largely estimate the number of service lines for each type of material in their systems.¹⁵ Given the incomplete nature of this data, the extrapolation from the data provided to calculate expected need for each state is not robust.

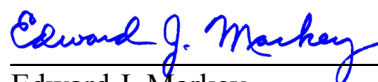
Overall, it is estimated that between 2023 and 2026, Massachusetts will lose approximately \$112 million in funding due to what the Commonwealth considers an “untested and opaque calculation by the EPA.”¹⁶ Importantly, this overall decrease in federal funding for LSLR translates to at least \$55 million in lost grant funds for the communities that need it most, given the requirement that 49 percent of the total allotment be provided to disadvantaged communities as grants or loan forgiveness.

We are very concerned about what this could mean for the Commonwealth, and encourage you to hear the concerns from our communities and our state government and take them into consideration as you review the funding formula. We understand EPA has stated that while FY23 allotments will not change, the agency will allow for a one-time update of the data and is currently working to provide final guidance.¹⁷ In order to ensure communities across the Commonwealth and across the country are receiving the appropriate funding they need to provide clean and safe drinking water to their residents, we ask that you provide uniform guidance to be followed across the country and review the process that skewed the allocation system, prior to readjusting the 2024 - 2026 years of the DWSRF LSL grants.

Sincerely,



Elizabeth Warren
United States Senator



Edward J. Markey
United States Senator

¹⁴ U.S. Environmental Protection Agency, Frequently Asked Questions on “7th Drinking Water Infrastructure Needs Survey and Assessment FAQ,” April 2023, p. 2,

https://www.epa.gov/system/files/documents/2023-04/Final_FAQ_DWINSA_4.4.23.v1.pdf.

¹⁵ *Id.*

¹⁶ Massachusetts Clean Water Trust, “Talking Points Addressing the DWSRF Lead Service Line Allotment Adjustments,” June 2023, p. 1, [On File with Office of Senator Elizabeth Warren].

¹⁷ *Id.*, p. 2; U.S. Environmental Protection Agency, Fact Sheet on “One-time Update to the 7th DWINSA Lead Service Line Questionnaire,” September 2023, https://www.epa.gov/system/files/documents/2023-09/One%20Time%20LSL%20update%20DWINSA_FACTSHEET_Final.pdf; U.S. Environmental Protection Agency, “Drinking Water Infrastructure Needs Survey and Assessment 7th Report to Congress,” September 2023, p. 17 and 24, https://www.epa.gov/system/files/documents/2023-09/Seventh%20DWINSA_September2023_Final.pdf.



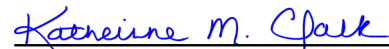
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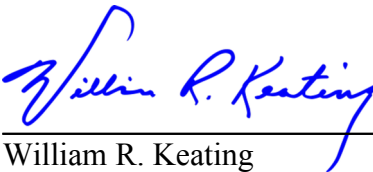
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