



Wastewater and Drinking Water: Committee Deadlines for EPA’s Administration of “Earmarks”

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Congress has demonstrated interest in assisting communities to finance certain wastewater and drinking water infrastructure improvements needed to comply with federal regulations and maintain levels of service. Through statute, appropriations, and report language, Congress has provided the U.S. Environmental Protection Agency (EPA) with authorities, funding, and direction to support state and local entities in making investments to comply with regulations and furthering public health protection. Congress authorized two primary programs at EPA to support this type of infrastructure: the [Clean Water State Revolving Fund \(CWSRF\)](#), authorized by the [Clean Water Act \(CWA\)](#), and the [Drinking Water State Revolving Fund \(DWSRF\)](#), authorized by the [Safe Drinking Water Act \(SDWA\)](#).

The 117th Congress reestablished its practice of directing funding to specific wastewater and drinking water infrastructure projects through community project funding/congressionally directed spending (CPF/CDS) items, commonly called *earmarks*. For more details, see CRS Report R47633, *The Role of Earmarks in CWSRF and DWSRF Appropriations in the 117th Congress*.

In the 118th Congress, the Consolidated Appropriations Act, 2024 (P.L. 118-42) also contains CPF/CDS grants for wastewater and drinking water infrastructure projects. P.L. 118-42 directs EPA to reserve 48% (\$787.7 million) of the CWSRF appropriation and 56% (\$631.7 million) of the DWSRF appropriation for CPF/CDS. The funds reserved for CPF/CDS are distributed directly to recipients, instead of to states’ SRF programs. This process effectively reduces the amount available for state SRF capitalization grants as well as the amounts set aside for grants to tribes and territories. The funds for CPF/CDS items support water infrastructure projects, so the total amount available for water infrastructure projects from the FY2024 appropriations act remains the same, though the CPF/CDS amounts are distributed directly to recipients rather than through SRF programs.

Some Members have raised concerns that EPA has not provided FY2022 and FY2023 CPF/CDS to grant recipients in a timely manner. The joint explanatory statement accompanying P.L. 118-42 stipulates that, within 45 days of enactment, EPA is to brief the House and Senate Committees on Appropriations on ways to improve the timeliness of CPF/CDS administration and requires EPA to report on the matter within 90 days of enactment.

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Deadlines for EPA

In the 118th Congress, both the House and Senate Committees on Appropriations have raised concerns over EPA's administration of CPF/CDS items. The House Committee on Appropriations' [report](#) accompanying the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2024 (H.R. 4821), identified the Committee's frustrations with EPA's administration of FY2022 and FY2023 CPF/CDS items. The Senate Committee on Appropriations' [report](#) on its bill (S. 2605) identified similar frustrations over the agency's "significant backlog of Congressionally Directed Spending projects." Both the House and Senate reports directed EPA to develop strategies that would enable faster CPF/CDS administration and to report these strategies to the committees.

The [joint explanatory statement](#) accompanying the final measure (P.L. 118-42) provides similar direction. P.L. 118-42 authorizes EPA to reserve \$13.3 million from the amounts available for FY2024 SRF capitalization grants to administer [FY2022 and FY2023 CPF/CDS](#). EPA cannot obligate the \$13.3 million without written confirmation by the House and Senate Committees on Appropriations. To gain this confirmation, EPA is directed to brief the appropriations committees by April 23, 2024 (within 45 days of enactment), and provide a report to the appropriations committees by June 7, 2024 (within 90 days of enactment). In the briefing and report, EPA is required to identify ways (other than increased staffing) that would improve EPA's timeliness and efficacy of CPF/CDS administration. In addition, EPA is required to provide in its report a "legislative structure" to allow for state administration of CPF/CDS projects.

Considerations

This direction to EPA for a briefing and report raises several questions for policymakers. The appropriations committees' direction indicates an interest in a proposal where states, rather than EPA, administer earmarks. One question may regard the states' capacity to administer these funds. In the joint explanatory statement, the appropriations committees direct EPA to include a proposed set-aside for states to use if they elect to administer CPF/CDS. A question may involve the source of those administrative set-aside funds. Would the set-aside funds be provided as a separate appropriation or set-aside from the SRF appropriation or set-aside from CPF/CDS? Another question may involve oversight of CPF/CDS administration. For example, would states that elect to administer CPF/CDS have to comply with similar oversight requirements, such as annual or biennial reports, as is required under the SRF programs? How EPA's proposal addresses these and other questions remains to be seen, though congressional interest in this topic may continue.

Author Information

Elena H. Humphreys
Analyst in Environmental Policy

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