



B-328237

December 15, 2016

The Honorable Ken Calvert  
Chairman  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
House of Representatives

The Honorable Betty McCollum  
Ranking Member  
Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
House of Representatives

Subject: *U.S. Environmental Protection Agency—Allocation of Grant Funds to Drinking Water State Revolving Funds for Additional Subsidization*

This responds to your request for an opinion on whether the Environmental Protection Agency's (EPA) grant funds were available to states to allocate for two separate subsidy programs in fiscal year (FY) 2016.<sup>1</sup> EPA makes capitalization grants to states to finance state-level revolving funds, which, in turn, make loans for drinking water infrastructure projects, among other purposes. The Consolidated Appropriations Act, 2016, required states to spend 20 percent of such grant funds on additional subsidies for projects carried out by "eligible recipients" in certain circumstances. Pub. L. No. 114-113, div. G, title II, 129 Stat. 2242, 2555 (Dec. 18, 2015). The Safe Drinking Water Act (SDWA) also permanently authorizes states to spend up to 30 percent of such grant funds on additional subsidies for projects carried out by a "disadvantaged community." 42 U.S.C. § 300j-12(d)(2). We conclude that in (FY) 2016, under the two statutes EPA could have permitted a state to allocate up to 50 percent of grant funds for such subsidies.

In accordance with our regular practice, we contacted EPA to seek additional facts and its legal views on this matter. *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). EPA provided such information. Letter

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<sup>1</sup> Letter from Chairman and Ranking Member, Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, House of Representatives, to Comptroller General, GAO (June 10, 2016).

from General Counsel, EPA, to Assistant General Counsel for Appropriations Law, GAO (Sept. 7, 2016) (EPA Letter).

## BACKGROUND

In 1996, SDWA, as amended, directed EPA to make capitalization grants to finance Drinking Water State Revolving Funds. Pub. L. No. 104-182, title I, § 130, 110 Stat. 1613, 1662–72 (Aug. 6, 1996), *codified at* 42 U.S.C. § 300j-12. Congress provides annual appropriations to EPA for such purposes. See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. G, title II, 129 Stat. 2242, 2554 (Dec. 18, 2015) (“For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, \$3,518,161,000, to remain available until expended, of which . . . \$863,233,000 shall be for making capitalization grants for the Drinking Water State Revolving Funds under section 1452 of [SDWA]”). Among other things, states use these grant funds to make loans to municipalities for drinking water infrastructure projects, like improving water treatment systems and repairing and replacing drinking water distribution pipelines. Municipalities repay these loans to the state, which, in turn, uses those amounts for additional loans. EPA, *How the Drinking Water State Revolving Fund Works*, available at [www.epa.gov/drinkingwatersrf/how-drinking-water-state-revolving-fund-works](http://www.epa.gov/drinkingwatersrf/how-drinking-water-state-revolving-fund-works) (last visited Dec. 12, 2016).

The American Recovery and Reinvestment Act of 2009 and subsequent appropriations acts require states to provide additional subsidies for “eligible recipients.”<sup>2</sup> Additional subsidies may include negative interest rate loans<sup>3</sup> or loans with part or the entire amount or principal forgiven. Neither federal law nor applicable regulations define “eligible recipients,” but according to EPA, an eligible

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<sup>2</sup> Over the years, the amount required for additional subsidization has varied. Pub. L. No. 111-5, div. A, title VII, 123 Stat. 115, 169 (Feb. 17, 2009) (not less than 50 percent); Pub. L. No. 111-88, div. A, title II, 123 Stat. 2904, 2937 (Oct. 30, 2009) (not less than 30 percent); Pub. L. No. 112-10, div. B, title I, § 1101(a)(4), 125 Stat. 38, 102 (Apr. 15, 2011) (not less than 30 percent); Pub. L. No. 112-74, div. E, title II, 125 Stat. 786, 1018 (Dec. 23, 2011) (not less than 20 percent but not more than 30 percent); Pub. L. No. 113-6, div. F, title I, § 1101(a)(3), 127 Stat. 198, 412 (Oct. 17, 2013) (not less than 20 percent but not more than 30 percent); Pub. L. No. 113-76, div. G, title II, 128 Stat. 5, 318 (not less than 20 percent but not more than 30 percent) (Jan. 17, 2014); Pub. L. No. 113-235, div. F, title II, 128 Stat. 2130, 2425 (Dec. 16, 2014) (not less than 20 percent but not more than 30 percent). No such provision appeared in a FY 2009 appropriations act.

<sup>3</sup> A “negative interest rate loan” means that a lender pays interest to a borrower. Charles Forelle, *Everything You Need to Know about Negative Rates*, The Wall Street Journal, Aug. 8, 2016, available at [www.wsj.com/articles/everything-you-need-to-know-about-negative-rates-1456700481](http://www.wsj.com/articles/everything-you-need-to-know-about-negative-rates-1456700481) (last visited Dec. 12, 2016).

recipient is any entity that is eligible to receive an award of financial assistance under SDWA. EPA Letter, at 2. Those entities eligible to receive assistance are (1) privately-owned and publicly-owned community water systems and non-profit noncommunity water systems, (2) potential water systems that will address existing public health problems caused by unsafe drinking water provided by individual wells or surface water sources, and (3) systems that deliver water by a constructed conveyance other than a pipe in certain circumstances. 42 U.S.C. § 300j-12; 40 C.F.R. § 35.3520. The Consolidated Appropriations Act, 2016, states that “20 percent of the funds made available . . . to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients . . . only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where the debt was incurred on or after the date of enactment of this Act.”<sup>4</sup> Pub. L. No. 114-113, 129 Stat. at 2555.

SDWA also authorizes states to provide additional subsidies to a “disadvantaged community” or to a community that the state expects will become a disadvantaged community as a result of a proposed project. 42 U.S.C. §§ 300j-12(d)(1). A disadvantaged community is a service area of a public water system that meets affordability criteria established by the state. *Id.* § 300j-12(d)(3). Such additional subsidies “may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.” *Id.* § 300j-12(d)(2).

SDWA limits the allocation of grant funds for other purposes. For instance, states must allocate 15 percent “solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.” *Id.* § 300j-12(a)(2). SDWA also restricts states from allocating more than 10 percent of funds to acquire land or conservation easements to protect a water source from contamination and to ensure compliance with national primary drinking water regulations. *Id.* §§ 300j-12(k)(1)(A)(i), 300j-12(k)(2)(A).

## DISCUSSION

At issue here is a purpose question—whether EPA’s appropriation may be used by states receiving capitalization grants for the purposes of both the subsidy program required by the Consolidated Appropriations Act, 2016 and the subsidy program

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<sup>4</sup> This provision was carried forward by the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriation Act, 2017, and Zika Response and Preparedness Act. Pub. L. No. 114-223, div. C, §§ 101(a), 103, 130 Stat. 857, 908–09 (Sept. 29, 2016). The Further Continuing and Security Assistance Appropriations Act, 2017, contained a supplemental appropriation and additional terms with respect to EPA capitalization grants. Pub. L. No. 114-254, div. A, § 196 (Dec. 10, 2016).

authorized under SDWA.<sup>5</sup> An answer in the affirmative would have permitted a state to set aside up to 50 percent of its federal grant funds for additional subsidies in FY 2016—20 percent for eligible recipients who meet certain conditions and 30 percent for disadvantaged communities.<sup>6</sup>

As with any question involving statutory interpretation, the analysis begins with the language of the statute. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009); *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). As the Supreme Court has stated, “[t]here is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes.” *United States v. American Trucking Ass’ns*, 310 U.S. 534, 543 (1940). When the language of a statute is clear on its face, it is the plain meaning of that language that controls. *Carcieri*, 555 U.S. at 387; B-326013, Aug. 21, 2014, at 4; B-324469, Nov. 8, 2013, at 3.

Here, the statutory language is unambiguous. In the Consolidated Appropriations Act, 2016, Congress required states to allocate 20 percent to provide additional subsidies to eligible recipients for initial financing or restructuring certain debt obligations. Pub. L. No. 114-113, 129 Stat. at 2555. Therefore, Congress plainly established a mandatory subsidy program for eligible recipients. Since 1996, Congress has authorized states to set aside up to 30 percent of their capitalization grant for additional subsidies of loans to disadvantaged communities or communities that may become disadvantaged as a result of a proposed project. 42 U.S.C. § 300j-12(d). Therefore, Congress plainly established a discretionary subsidy program for disadvantaged communities.

When two laws appear to potentially conflict, the Supreme Court strives to harmonize the laws to give the maximum possible effect to both. *See Posadas v. National City Bank of New York*, 296 U.S. 497, 503 (1936); B-307720, Sept. 27, 2007; B-193282, Dec. 21, 1978. We do not presume that the Congress intends to repeal existing law in the absence of expressed intent to do so. Thus, to the greatest extent possible, provisions of an appropriation act should be read in concert with the provisions of a related authorization act. B-226389, Nov. 14, 1988; B-193282, Dec. 21, 1978.

The subsidy provision in the Consolidated Appropriations Act, 2016, and the subsidy provision in SDWA properly coexisted in FY 2016. Neither SDWA nor any other law

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<sup>5</sup> It is implicit in the grant relationship that the grantor agency will oversee the funds and the grantee must account to the grantor for its use of funds. B-303927, June 7, 2005; 64 Comp. Gen. 582 (1985).

<sup>6</sup> EPA stated that it is “not aware of any state that has used both the SDWA disadvantaged community subsidization and the appropriations provision for additional subsidy.” EPA Letter, at 4.

required a state to allocate grant funds in a way that would impede its ability to set aside amounts for both subsidy programs, if it so chooses.<sup>7</sup> We read these provisions together to permit states using EPA-administered grant funds to allocate amounts for a subsidy program for eligible recipients and a subsidy program for disadvantaged communities.<sup>8</sup>

This interpretation is consistent with our conclusion in a recent opinion. In B-327212, Apr. 8, 2016, we considered whether USAID could obligate amounts from two different appropriations for nonemergency food assistance. There, USAID had obligated amounts from one appropriation pursuant to the Food for Peace Act and amounts from another appropriation pursuant to the Foreign Assistance Act. We explained that these “independent author[ities]” permitted USAID to engage in complementary activities. *Id.*, at 8. Similarly, here, states are authorized to maintain similar subsidy programs pursuant to two discrete authorities—the Consolidated Appropriations Act, 2016, and SDWA.

If you have questions, please call Edda Emmanuelli-Perez, Managing Associate General Counsel, at (202) 512-2853, or Julia C. Matta, Assistant General Counsel, at (202) 512-8257.

Sincerely,



Susan A. Poling  
General Counsel

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<sup>7</sup> SDWA did place some conditions on the capitalization grant. For instance, states must allocate 15 percent “solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.” 42 U.S.C. § 300j-12(a)(2). Congress has the constitutional power to attach such conditions pursuant to the spending clause. U.S. Const. art. I, § 8, cl. 1; *West Virginia v. U.S. Dep’t of Health & Human Services*, 289 F.3d 281, 286 (4<sup>th</sup> Cir. 2002); *Oklahoma v. Civil Service Commission*, 330 U.S. 127, 143 (1947).

<sup>8</sup> Also, our review of the legislative history uncovered no evidence that Congress intended the subsidy provision in the Consolidated Appropriations Act, 2016, to limit, repeal, or otherwise affect the subsidy provision in SDWA.