

GAO

Report to the Chairman, Committee on
Public Works and Transportation,
House of Representatives

March 1991

WATER POLLUTION

States' Progress in Developing State Revolving Loan Fund Programs



143620



United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-242917

March 19, 1991

The Honorable Robert A. Roe
Chairman, Committee on Public
Works and Transportation
House of Representatives

Dear Mr. Chairman:

As agreed with your office, this report discusses (1) the status of state efforts to develop State Revolving Funds (SRFs) to finance construction of wastewater treatment plants, (2) key characteristics of SRF Programs, such as how loan funds are structured and how municipalities are using the funds, and (3) the major issues the states, the Environmental Protection Agency (EPA), and others have raised concerning how certain regulatory and statutory requirements affect the ability of SRFs to meet the nation's wastewater treatment needs.

The SRF Program was established in the Water Quality Act of 1987 as a primary source of financing for wastewater treatment facilities at the state level. Under the program, the federal government provides "seed money" in the form of grants to the states to capitalize their SRFs. Money from the SRF is then loaned to local governments to build treatment plants. As loans are repaid, the SRF replenishes. SRFs replace the Construction Grants Program (title II of the Clean Water Act), which has provided grants directly to local governments for plant construction since 1973.

Also, as agreed, a future report will examine these issues in greater depth and recommend modifications where appropriate. That report will also address the fundamental question of how well SRFs can serve as a permanent source of funding for the nation's wastewater treatment needs. We plan to pay particular attention to how well SRFs meet the needs of disadvantaged communities and to identify program modifications that could help states address this difficult problem.

Results in Brief

States are developing their SRF Programs at different paces. While many SRFs are not in final form, all 50 states and Puerto Rico have developed statutory and administrative frameworks for their SRFs and have received at least one federal capitalization grant. Among the factors affecting the rate at which states develop programs are their amount of

previous experience with revolving loan programs and their ability to secure state legislative authorization.

We found that although states have a great deal of flexibility in setting up their funds, the funds thus far are similar in structure and how they are used. However, EPA expects greater diversity in SRFs as states become more experienced with them, particularly with regard to financial management. We also found that 40 states have supplemental programs to pay for ineligible costs, such as land that is not directly used in the treatment process. For example, while wetlands used to filter wastewater as part of the treatment process would be eligible for SRF assistance, land upon which a treatment facility is constructed would not be eligible. Supplemental programs have also been established to assist disadvantaged communities that cannot afford to repay a loan.

States, and in some cases EPA officials, have identified several statutory and regulatory issues that may affect how efficiently and effectively SRFs meet wastewater treatment needs. For example,

- Do certain restrictions on the use of federal grant money increase costs unnecessarily to states and local governments? This would include, for example, requirements to comply with certain other national policy goals such as equal employment opportunity or protection of endangered species.
- Should local governments continue to be prohibited from using SRFs to purchase land not directly used in the wastewater treatment process?
- Are all existing EPA oversight requirements necessary, particularly after the federal government's financial involvement ends in 1994?

Background

The SRF Program represents a dramatic shift in how the nation will finance \$83.5 billion in wastewater treatment needs. Where the Construction Grants Program provided grants directly to local governments to build wastewater treatment facilities, SRFs are loan programs with the initial capital provided through federal seed money and state contributions. States use the fund to provide a range of loan assistance to local governments, and as loans are repaid, the fund replenishes.

The Water Quality Act of 1987 authorized federal grants to states through 1994 to establish and capitalize their revolving funds. After 1994, federal financial support ends, and the SRFs will be sustained through repayment of loans made from the fund.

As a condition of receiving federal funds, states must provide a matching amount equal to 20 percent of the total grant and agree to use the money first to ensure that wastewater treatment facilities are in compliance with deadlines, goals, and requirements of the Clean Water Act. After meeting this "first use" requirement, the states may also use the funds to support programs to deal with nonpoint source pollution and to protect their estuaries. In addition, states must agree to ensure that local governments meet a range of requirements that applied to the title II Construction Grants Program. These include, for example, compliance with Davis-Bacon Act wage requirements.¹ Furthermore, states must comply with "cross-cutting" federal requirements associated with the receipt of federal grants, such as promotion of equal employment opportunities and participation by minority-owned businesses.²

The act established several reporting requirements for states. Each fiscal year, states must provide an Intended Use Plan, which among other things, describes the projects that will be funded and the financial strategy for distributing the funds. Also, states must provide an annual report to EPA on the financial status and uses of the fund for the previous fiscal year.

States Are Developing Their SRF Programs at Different Paces

As of October 1, 1990, all 50 states and Puerto Rico had received at least one grant; 41 states had received two or more capitalization grants. While a total of \$2.76 billion in grants has been awarded, states are still developing the details of their programs.

According to EPA, several factors caused states to implement programs at different paces. Some states had revolving funds in place and were therefore experienced at fund development and administration. Others did not have existing revolving fund programs and had to hire new staff with the financial skills to run the program. In addition, states had to secure legislative authorization and funds to match the federal grant. For example, because West Virginia lacks sufficient resources, it plans to enlist several communities that are interested in receiving SRF assistance to help meet the match. Finally, states had to convince local governments that participation in the SRF was their best funding option since construction grants would no longer be available.

¹Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act.

²Appendix II lists requirements associated with title II of the Clean Water Act and "cross-cutting" federal authorities under other statutes that states must apply to their SRF Programs.

Key Characteristics of State Programs

Thus far, many similarities exist among state SRF programs. Officials from EPA's Office of Municipal Pollution Control explained that with little experience administering SRFs, many states were following closely EPA guidance on how to set up an SRF Program. Nevertheless, they believe differences will likely grow as states increasingly take advantage of the flexibility they are allowed in establishing their programs. The following are key characteristics of SRF Programs dealing with financial strategies to capitalize the funds, how the funds are used, and other matters.³

Leveraging

One of the key characteristics of SRFs is the states' financial strategies; in particular, their plans for leveraging additional money to the funds. Leveraging involves borrowing by the state through issuance of bonds guaranteed by resources in the fund. Capital raised is then placed in the fund to increase the resources available to assist local governments.

New York has one of the most ambitious leveraging programs; it plans to use each dollar from the federal grant and the state match to back \$3 in bonds. The state provided approximately \$660 million in assistance, while the grant amount was approximately \$212 million.

Critics of leveraging argue that it results in increased administrative costs, thus reducing the amount of subsidy that states can offer local governments through SRFs.⁴ EPA officials acknowledge that leveraging increases administrative costs but maintain that the desirability of leveraging depends on the cost and timing of a state's projects. If a state has many projects ready for construction, it may want to leverage so that the projects can be funded more quickly. However, leveraging may be less advantageous for states with fewer needs.

As of October 1990, only nine states were leveraging their SRFs. However, 18 others have plans to leverage. EPA expects that as states become more experienced with SRFs, the extent of leveraging is likely to increase because it can provide additional funds without state appropriations.

³Appendix I summarizes key characteristics of SRF Programs.

⁴The reduced subsidy can take the form of higher interest rates or reduced loan amounts.

Use of Funds to Meet Other Water Quality Needs

The Clean Water Act authorizes states to use SRF assistance for water quality needs in addition to wastewater treatment. Specifically, SRF money can be used, after specific conditions have been met, to support states' efforts to control their nonpoint source water pollution problems and to protect priority estuaries that are part of EPA's National Estuaries Program.

States say that without any additional financial commitment, it is unlikely that many of these other uses would be funded, given the huge existing wastewater needs facing states. They note that the difference between resources available to states and demands for those resources is large, when only wastewater treatment needs are considered.⁵ EPA estimates wastewater treatment needs of \$83.5 billion by the year 2008 while the Congress has authorized \$8.4 billion in capitalization grants for SRFs. In addition, use of the SRF to pay for other water quality needs would entail tremendous expenditures for states and local governments. Our recent report, Water Pollution: Greater EPA Leadership Needed to Reduce Nonpoint Source Pollution (GAO/RCED-91-10, Oct. 15, 1990), pointed out that billions of dollars will be needed to address nonpoint problems. Pennsylvania alone estimates that it will need \$3 billion to \$5 billion just to correct pollution problems caused by abandoned coal mines.

As of October 1990, only two states were funding nonpoint projects, and none of the states were using funds for estuary protection activities. However, 21 states said that they plan to use SRF money for nonpoint projects at some point. Seven of the 13 states with estuaries in the National Estuaries Program plan to use SRF assistance for this purpose in the future.

Types of Assistance Offered by States Through SRFs

The Water Quality Act of 1987 authorized states to provide a range of loan assistance to local governments through SRFs, including direct loans for new projects, retiring existing debt through refinancing, and loan guarantees. For the most part, however, states are issuing direct loans. EPA officials expect that as states gain more experience managing SRFs, they will offer the other types of loan assistance.

⁵EPA stated in its annual report to the Congress on nonpoint source pollution that states were unlikely to use their discretionary authority for nonpoint source management programs "largely because of the high priority accorded to construction of publicly-owned treatment works."

The next most common form of assistance is refinancing previously executed local debt obligations, although only 11 states have provided refinancing assistance. Through refinancing, previously issued municipal bonds are retired by money borrowed from SRFs at a lower interest rate. States said that EPA's regulations limit their ability to refinance debt, however, because cash must be drawn over eight equal quarters if it exceeds 5 percent of each fiscal year's capitalization grant, or \$2 million, whichever is greater. This amount may not be sufficient to retire the debt in one lump sum payment. Only seven states have used the SRF to purchase local debt obligations, such as municipal bonds.⁶

None of the states have offered the other authorized forms of loan assistance: to guarantee local debt obligations, purchase bond insurance for local debt obligations, or guarantee bonds issued by municipal and intermunicipal revolving funds. EPA officials said that this is due, in part, to states' inexperience in managing SRFs. However, officials identified another problem with loan guarantees and bond insurance purchases. They said that the subsidy associated with these types of SRF assistance may not be large enough to justify the administrative costs associated with receiving SRF assistance or to keep user charges within an affordable range.

State Financial Obligations

States have two types of financial obligations under the SRF Program, the required 20 percent state match and payment of administrative costs. States are authorized to use 4 percent of the capitalization grants to cover administrative costs. After capitalization grants end in 1994, state obligations will change, because a match will not be required (since no new grants will be offered) and states will have to cover all administrative costs.

Most states use appropriations to meet the required match. However, some states have met the requirement by other means such as issuing bonds, guaranteed only by interest earned on the SRF. Other states said that using bonds in such a way to meet the required match is a problem in that the state does not have to commit any of its own money to the funds. By the end of fiscal year 1990, 10 states had used or planned to use SRF revenue bonds to meet their matching requirement.

⁶EPA defines refinancing as retiring municipal debt associated with previously constructed projects. EPA defines purchasing municipal debt as retiring debt that was issued for ongoing or planned construction.

To ensure that more of the SRF funds are available for financial assistance to local communities, the Congress imposed a 4-percent cap on use of the capitalization grant for administrative costs. However, some state officials are concerned that administrative costs will exceed this limitation, particularly in the early years of developing the program. Furthermore, after capitalization grants end in 1994, states say that they should be allowed to use some portion of the fund to cover administrative costs.

To some extent, states can recover administrative costs by levying loan origination and processing fees on local loan recipients to offset administrative costs. Colorado charges fees on loans to local governments even though it can cover administrative costs with 4 percent of the grant. Until 1994, Colorado plans to use the proceeds from the loan fees to help meet its matching requirement.

State Programs to Supplement SRF Funds

As of October 1990, 40 states had supplemental programs for water quality financing to meet two major needs unmet by SRFs: (1) ineligible costs, such as for land that is not directly used in the wastewater treatment process and (2) helping disadvantaged communities that cannot afford to repay loans. For example, Rocksprings, Texas, has a population of 1,350, an annual budget of \$221,000, and five full-time employees. The state has declared the town's existing septic system illegal because of health reasons and is requiring construction of a \$3.5-million wastewater treatment facility. Rocksprings is unable to obtain SRF loan assistance because it cannot increase user fees sufficiently to repay the loan.

Issues Concerning Statutory and Regulatory Requirements

Several issues raised by states relate more directly to the statute and regulations that established the SRF Program. They include the following questions:

- Do certain restrictions on the use of federal grant money increase costs unnecessarily to states and local governments?
- Should local governments be prohibited from using SRFs to purchase land not directly used in wastewater treatment processes?
- Are all existing EPA oversight requirements necessary, given the agency's limited role in the SRF Program?
- Is the 20-year maximum loan term appropriate for the SRFs?
- Should a letter of credit be used to transfer capitalization grants to states?

Restrictions on Use of Grant Funds

From the Construction Grants Program (title II of the Clean Water Act), 16 statutory requirements were applied by the Congress to use of capitalization grants for the SRF Program. (See app. II.) States must comply with the requirements for all projects funded up to the amount equivalent to the federal grant. The most controversial requirement applies wage requirements of the Davis-Bacon Act to wastewater treatment plant construction, which some say could increase project costs significantly. In addition to these title II requirements, a variety of cross-cutting federal authorities are applied, which promote and regulate national policy goals such as equal employment opportunity or protection of endangered species. These authorities make the receipt of federal financial assistance dependent on the agency's or state's performance in these areas.

States said that cross-cutting and title II requirements substantially increase state and local costs. Texas and New Jersey officials estimate that the title II requirements could add up to 20 percent to project and administrative costs. Tennessee officials estimate that the Davis-Bacon wage provisions alone could add as much as 30 percent to project costs. They indicated that this would be a particular hardship for small or disadvantaged communities, which are generally unable to pay wage rates comparable with those paid in large cities. These officials also noted that these cost increases could impair the health of their SRF because they have to increase subsidies to local governments in order to offset the increased project and administrative costs.

An official in EPA's Region I maintains that, except for small or disadvantaged communities, the increased costs associated with title II and cross-cutting requirements may not be as substantial as states believe. Since projects under the Construction Grants Program were subject to the same requirements, the states should already have procedures and staff in place to monitor and ensure compliance. In addition, most title II and cross-cutting requirements will cease when capitalization grants end in 1994, so the requirements will not continue to limit states' funding decisions.

Acquiring Land With SRFs

Recipients of SRF assistance may use the money to acquire land that is directly used in wastewater treatment processes. For example, wetlands used to filter wastewater as part of the treatment process would be eligible for SRF assistance. However, other land that may be necessary, such as land upon which a treatment plant would be built and easements

and rights of way needed for collection systems, cannot be purchased with SRF assistance.

This restriction was included in the Construction Grants Program. An EPA official said that under that program grants might have encouraged local governments to purchase more land than necessary. However, with the loan program, state officials said that the restriction is unnecessary because localities will probably only purchase the amount of land they need since they will have to repay the loans. They also said that it increases financing costs because local governments must often seek private financing in addition to the SRF loan. A recent survey of states, conducted by the Council of Infrastructure Financing Authorities (CIFA), showed that 89 percent of respondents favored making all necessary land eligible for SRF assistance. EPA officials told us that they support this position and will consider whether to recommend to the Congress that it remove the restriction.

Oversight Requirements

In accordance with the Water Quality Act, EPA has established oversight procedures to protect the integrity of SRFs and to ensure that they comply with program requirements. Among the procedures required are (1) an annual report, describing how the state carried out its SRF activities and complied with SRF program requirements and (2) an annual EPA review, assessing states' performance of their SRF activities and the financial health and management of SRFs. In addition, states must submit to an annual financial, compliance, and operational audit of their SRFs.

In CIFA's recent survey, 93 percent of the states responding favored the termination of the federal oversight requirements when the awarding of capitalization grants ends in 1994. States maintain that this would reduce their administrative burden. They believe that, after that period, states should become the sole administrator of the SRF Program. EPA believes that, although not specifically required by statute, it must continue federal oversight after 1994 because the oversight requirements do not have a specific time limit.

Twenty-Year Maximum Loan Term

The Congress established a 20-year maximum repayment term for loans offered through SRFs. The maximum loan term affects primarily small or disadvantaged communities' ability to qualify for SRF assistance. Specifically, the 20-year term significantly increases user charges to wastewater treatment plant customers over loans having terms of 28-30 years, which are offered in some state programs.

Small communities have higher per household costs for wastewater treatment facilities because they lack the advantage of economies of scale. When this disadvantage is combined with lower per household income, user charges pose a greater burden on certain communities. West Virginia maintains that requiring a 20-year loan term reduces its ability to help small communities qualify for SRF loan assistance. However, EPA officials have responded that they would be cautious about extending the loan term because of the design life of certain parts of facilities. For example, pumps and other mechanical equipment will require significant replacement investments after 20 years.

Letter of Credit

To capitalize each state's SRF, the federal government makes payments through a letter of credit to the states, based on the states' projections of costs associated with binding commitments in their Intended Use Plans. At the time the SRF or a recipient incurs a cost, the state can initiate a cash draw request against the letter of credit.⁷ EPA officials said that the Office of Management and Budget prefers using the letter of credit instead of single cash payments because it enables the federal government to avoid sudden cash demands on the federal treasury by coordinating outlays with actual expenditures of funds.

EPA officials suggested that the letter of credit was one of the most contentious issues during development of the implementing regulations. Many states were initially concerned that relying on a letter of credit would delay payments to contractors. According to EPA and several states we contacted, however, reliance on the letter of credit has not resulted in such problems. Of greater consequence is the question of who possesses and therefore earns interest on funds—the federal government or the states. States prefer cash payments up front because of the potential to earn interest and increase the money available for projects. The state of Washington asserts that it has “lost” about \$1 million in interest earnings and estimates that it will lose between \$12 million and \$27 million through fiscal year 1994.

⁷In January 1991, the letter of credit was replaced by a “vendor express” procedure. The vendor express procedure simplifies the process by which states receive their federal payments, but states continue to receive cash on a negotiated schedule as with the letter of credit.

Objectives, Scope, and Methodology

Our objectives in this review were to examine (1) the status of state efforts to develop State Revolving Funds to finance construction of wastewater treatment plants, (2) key characteristics of state SRF programs, such as how these loan funds are structured and how municipalities are using the funds, and (3) the major issues that have been raised by states, the Environmental Protection Agency, and other parties concerning how certain regulatory and statutory requirements affect SRFs' ability to meet the nation's wastewater treatment needs. Our work was performed between October and December 1990 in accordance with generally accepted government auditing standards.

To accomplish our objectives, we interviewed officials at EPA's Office of Municipal Pollution Control (OMPC), its regional offices, and several states and state associations concerned with financing wastewater treatment facilities. Also, we collected data on SRF grant awards from the SRF Awards List (OMPC's internal tracking system), reviewed the results of a 50-state EPA survey dealing with the characteristics of SRF Programs completed in October 1990, and reviewed a draft report to the Congress in which OMPC assessed the status of nine SRF Programs.

We discussed the facts in this report with EPA officials. They generally agreed with the facts we presented, and we incorporated their comments where appropriate. As requested, we did not obtain official agency comments on a draft of this report.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the appropriate congressional committees; the Administrator, EPA; and other interested parties. If you have any further questions about this report, please contact me at (202) 275-6111. Major contributors to this report are listed in appendix III.

Sincerely yours,



Richard L. Hembra
Director, Environmental Protection
Issues

Contents

Letter	1
Appendix I Characteristics of State Revolving Loan Funds	14
Appendix II Federal Cross-Cutting Authorities and Title II Requirements	18 18 21
Appendix III Major Contributors to This Report	23

Abbreviations

CIFA	Council of Infrastructure Financing Authorities
EPA	Environmental Protection Agency
GAO	General Accounting Office
OMPC	Office of Municipal Pollution Control
SRFs	State Revolving Funds

Characteristics of State Revolving Loan Funds

States	No. grants awarded ^a	Capitalization source ^b		Interest rate	
		Federal	State match	Flat	Market
Alabama	2	\$21	\$4	X	X
Alaska	2	16	3		X
Arizona	1	13	3		X
Arkansas	2	27	5	X	
California	2	247	49		X
Colorado	2	23	5		X
Connecticut	3	73	15	X	
Delaware	1	10	2		X
Florida	2	120	24		X
Georgia	3	90	18	X	
Hawaii	2	15	3		X
Idaho	2	9	2	X	
Illinois	2	100	20		X
Indiana	1	23	5		X
Iowa	2	26	5		X
Kansas	2	18	4		X
Kentucky	3	57	11		X
Louisiana	3	33	7		X
Maine	2	15	3		X
Maryland	2	46	9		X
Massachusetts	2	126	25		X
Michigan	2	83	17	X	
Minnesota	2	35	7		X
Mississippi	2	31	6	X	
Missouri	2	53	11		X
Montana	1	9	2		X
Nebraska	2	10	2		X
Nevada	2	9	2		X
New Hampshire	2	20	4		X
New Jersey	3	205	41		X
New Mexico	3	21	4	X	
New York	1	212	42		X
North Carolina	2	56	11		X
North Dakota	1	9	2		X
Ohio	2	117	23		•
Oklahoma	3	25	5		X
Oregon	2	25	5	X	
Pennsylvania	2	76	15		X

**Appendix I
Characteristics of State Revolving
Loan Funds**

Use of fund ^c		Forms of assistance ^d			Leveraging		Supplemental programs		
Wastewater	Nonpoint	Loans	Refinance	Purchase debt	Current	Planned	Loan	Grant	Other ^e
X		X	X		Y				
X		X			N	N			
.	.	.	.	.	N	Y			
X		X		X	N	Y			X
X		X			N	Y	X	X	
X		X		X	Y		X	X	X
X		X			N	Y	X	X	
.	.	.	.	.	N	N			
X		X	X		N	Y			X
X		X			N	N			X
.	.	.	.	.	N	Y	X	X	
X		X			N	N	X	X	
X		X	X		N	N			X
.	.	.	.	.	N	Y			
X		.	.	.	Y				
X		X			N	N			
X		X			N	Y	X	X	X
X		X		X	N	Y			
X	X	X	X		Y		X	X	
.	.	.	.	.	N	Y	X	X	
X		X			N	N			
X		X	X		Y				X
.	.	.	.	.	N	N	X	X	
X		X			N	N			X
.	.	.	.	.	N	Y			X
X		X			Y		X		
X		X			N	Y			
X		X			N	N			
.	.	.	.	.	Y				X
X		X	X		N	N	X	X	X
X		X		X	N	Y	X	X	
X		X			N	N			X
X		X	X		N	N	X	X	X

(continued)

**Appendix I
 Characteristics of State Revolving
 Loan Funds**

States	No. grants awarded ^a	Capitalization source ^b		Interest rate	
		Federal	State match	Flat	Market
Puerto Rico	1	12	2	X	
Rhode Island	1	13	3	X	X
South Carolina	2	42	12	X	X
South Dakota	2	9	2	X	
Tennessee	4	64	13		X
Texas	3	262	52		X
Utah	3	23	5	X	
Vermont	2	11	2	X	X
Virginia	3	115	23		X
Washington	2	34	7	X	
West Virginia	1	21	4		•
Wisconsin	2	52	10		X
Wyoming	1	12	2		X

**Appendix I
Characteristics of State Revolving
Loan Funds**

Use of fund ^c		Forms of assistance ^d				Leveraging		Supplemental programs		
Wastewater	Nonpoint	Loans	Refinance	Purchase debt	Current	Planned	Loan	Grant	Other ^e	
.	.	.	.	.	N	N			
.	.	.	.	.	N	Y	X	X	
X		X			N	Y			X	
X		X		X	N	N	X	X	X	
X		X			N	Y	X	X	X	
X		X	X		N	N	X	X	X	
X		X		X	N	N	X		X	
.	.	.	.	.	N	N	X	X	X
X		X	X		N	Y	X	X	X	
X	X	X			N	N	X	X	X	
.	.	.	.	.	N	N	X		
.	.	.	.	.	N	N	X		
.	.	.	.	.	N	N	X	X	X

^aSummary of grants received: 10 states received 1 grant; 30 states received 2 grants; 10 states received 3 grants; 1 state received 4 grants.

^bAll dollars are in millions and vary slightly due to rounding. In addition to the funds shown, 17 states contribute more than the 20-percent required match.

^cStates are authorized to provide assistance for wastewater treatment, non-point pollution, and estuary protection, but none of the states are currently providing assistance for estuary protection projects.

^dStates are authorized to provide forms of assistance in addition to those in the table, but states have not offered them. With refinancing, local governments use the SRF to retire debt associated with previously constructed plants. With purchasing municipal debt, local governments use the SRF to purchase recently issued bonds for ongoing or planned construction.

^eOther programs are loan programs for a broad range of environmental or infrastructure projects, including wastewater treatment.

Note: A "." shows that the information was not available at the time of EPA's survey.

Source: EPA's 50-state survey completed in October 1990, the SRF Awards List, and the GICS data base.

Federal Cross-Cutting Authorities and Title II Requirements

This appendix provides a list of federal cross-cutting authorities and title II requirements that must be applied by states to their SRF Programs. Cross-cutting authorities are statutes that promote certain other national policy goals such as equal employment opportunity or protection of endangered species. These authorities make the receipt of federal financial assistance dependent on the agency's or state's performance in these areas. The title II requirements refer to a number of provisions under the Construction Grants Program that were applied by the Congress to use of capitalization grants for the SRF Program.

Federal Cross-Cutting Authorities

Because of the unique relationship between federal and local governments in the SRF Program—federal money is commingled with state funds and then provided to local governments in the form of loans—EPA had difficulty determining which federal authorities apply and to what extent. EPA concluded that the Congress has a proprietary federal interest in assistance “directly made available by” capitalization grants and so identified several federal authorities that apply to the SRF Program. Following is EPA's list of cross-cutting federal authorities dealing with a variety of environmental, social, economic, and other issues. These were compiled from EPA's Guidebook to the Application of Federal Cross-Cutting Authorities in the State Revolving Fund Program of the Clean Water Act. The list of title II requirements is from EPA's SRF Interim Guidance.

Environmental Authorities

Archeological and Historic Preservation Act (P. L. 86-523, as amended): Requires agencies to identify relics and specimens and other forms of scientific, prehistorical, historical, or archaeological data that may be lost in the course of federally sponsored construction.

Clean Air Act (P. L. 84-159, as amended): Section 176(c) of the act prohibits any federal assistance for an activity that fails to conform to an applicable state implementation plan.

Coastal Barriers Resources Act (P.L. 97-348): Restricts federal financial assistance that would have the effect of encouraging development in the Coastal Barrier Resources System and in wetlands, natural habitats, and other ecosystems adjacent to the coastal barriers.

Coastal Zone Management Act (P. L. 92-583, as amended): Federal activities, including financial assistance to state and local governments,

affecting the coastal zone must be consistent with approved state coastal zone management plans.

Endangered Species Act (P. L. 93-205, as amended): Requires federal agencies to ensure that their activities do not jeopardize any listed or proposed endangered or threatened species or the critical habitat on which they depend.

Farmland Protection Policy Act (P. L. 97-98): Directs federal agencies to identify the potential adverse affects of their programs on farmland and its conversion to nonagricultural uses and to take mitigating or alternative measures to lessen these affects.

Fish and Wildlife Coordination Act (P. L. 85-624, as amended): Requires federal agencies to consult with U.S. Fish and Wildlife Service officials and state wildlife officials during the planning phases for any project that will control or modify a body of water to mitigate any harmful affects the water resource development project may have on wildlife and its habitat in the project area.

Floodplain Management (Executive Order 11988, as amended by Executive Order 12148): Requires federal agencies undertaking or assisting activities to determine whether the proposed activities will occur in a floodplain, to select alternative locations to a floodplain if that is practicable, and, if no practical alternatives are available, to take measures to reduce the risk of flood damage.

National Historic Preservation Act (P. L. 89-665, as amended): Requires agencies to identify and nominate for the National Register of Historic Places resources under its control and to ensure that these resources are not inadvertently transferred, sold, demolished, or substantially altered or allowed to deteriorate significantly.

Safe Drinking Water Act (P. L. 93-523, as amended): Prohibits federal financial assistance for any project which EPA determines may contaminate any aquifer that serves as the sole or principal source of drinking water for a community.

Protection of Wetlands (Executive Order 11990): Directs federal agencies to determine whether proposed activities will be located in or affect a wetland and to refrain from damaging or altering wetlands in any manner when there are feasible alternatives to the action.

**Appendix II
Federal Cross-Cutting Authorities and Title
II Requirements**

Wild and Scenic Rivers Act (P. L. 90-542, as amended): Prohibits federal assistance for water resources development projects that would have adverse effects on the scenic, recreational, or other special values of a wild and scenic river.

Social Policy Authorities

Civil Rights Act of 1964, Title VI (P. L. 88-352); Federal Water Pollution Control Act Amendments of 1972, section 13 (P. L. 92-500, as amended); Rehabilitation Act of 1973, section 504 (P. L. 93-112); Age Discrimination Act of 1975 (P. L. 94-135): These statutes, in combination, prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, handicap, or age, in programs or activities receiving federal financial assistance.

Drug-Free Workplace Act of 1988 (P. L. 100-680, sec. 5152, et seq.): Requires recipients of federal grants to certify that they will provide a drug-free workplace by notifying employees that the manufacture, possession, sale, or use of drugs in the workplace is prohibited, specifying the actions that will be taken against employees for violations of such prohibitions, and establishing a drug-free awareness program.

Equal Employment Opportunity (Executive Order 11246, as amended): Requires all federal contracting agencies to include nondiscrimination and affirmative action provisions in all contracts and to require that these provisions be included in subcontracts.

Promoting the Use of Minority- and Women-Owned Businesses (Executive Orders 11625, 12138, and 12432): Requires federal agencies to take actions to increase the participation of minority- and women-owned business enterprises in the financial assistance programs of federal agencies and in contracts awarded by state and local recipients of federal assistance.

**Economic and
Miscellaneous Authorities**

Brooks-Murkowski Amendment (P. L. 100-202, sec. 109): Prohibits recipients of federal assistance appropriated for fiscal year 1988 from entering into construction contracts with firms that are owned or controlled by citizens of any country on the list of foreign countries that deny fair and equitable market opportunities for the products or services of U.S. businesses.

Procurement Prohibitions under Clean Air Act, sec. 306; Clean Water Act, sec. 508; Executive Order 11738: The statutes prohibit federal

agencies from procuring goods or services from persons who have been convicted of violations of either law if the goods or services are to be produced by the facility that gave rise to the violation. The executive order prohibits federal agencies from extending assistance to such facilities.

Debarment and Suspension (Executive Order 12549): Excludes individuals and businesses who, by their actions, have relinquished their claim to federal assistance programs.

Demonstration Cities and Metropolitan Development Act (P. L. 89-754, as amended): Requires federal agencies to consult with local officials to ensure smoother coordination of their assistance programs and to ensure that projects funded under federal programs are consistent with local planning requirements.

Uniform Relocation Assistance and Real Property Acquisition Act (P. L. 91-646, as amended): Establishes a uniform policy for fair and equitable treatment of persons who are displaced from their homes, farms, or businesses to make way for federal or federally assisted projects.

Title II Requirements

Section 201(b) requires that projects apply best practicable waste treatment technology.

Section 201(g)(1) limits assistance to projects for secondary treatment, advanced treatment, or any cost-effective alternative, new interceptors, and infiltration-in-flow correction.

Section 201(g)(2) requires that alternative technologies be considered in project design.

Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration.

Section 201(g)(5) requires that the applicant study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources.

Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facility.

Section 201(n)(1) provides that funds under section 205 may be used for water quality problems due to discharges of combined sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a state.

Section 201(o) calls on the EPA Administrator to encourage and assist communities in the development of capital financing plans.

Section 204(a)(1) requires that treatment work projects be included in plans developed under section 208.

Section 204(a)(2) requires that treatment works projects be in conformity with plans developed under section 303(e).

Section 204(b)(1) requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment works.

Section 204(d)(2) requires that one year after the date of completion of construction and initial operation, the owner/operator of the treatment plant must certify that the facility meets design specifications and effluent limitations included in its permit.

Section 211 provides that grants are not authorized for major rehabilitation or replacement of sewage collectors unless the collector is needed to assure the total integrity of the treatment works, or that for a new collector, adequate capacity exists at the facility to treat the collected sewage. Funding separate storm sewer systems is prohibited through fiscal year 1990.

Section 218 assures that treatment systems are cost-effective and requires that projects over \$10 million include a value-engineering review.

Section 511(c)(1) applies the National Environmental Policy Act to treatment works projects.

Section 513 applies Davis-Bacon Act labor wage provisions to treatment works construction. Under Davis-Bacon, wages paid for the construction of treatment works must conform to the prevailing wage rate established for the locality by the U.S. Department of Labor. (40 U.S.C. sec. 276 et seq.)

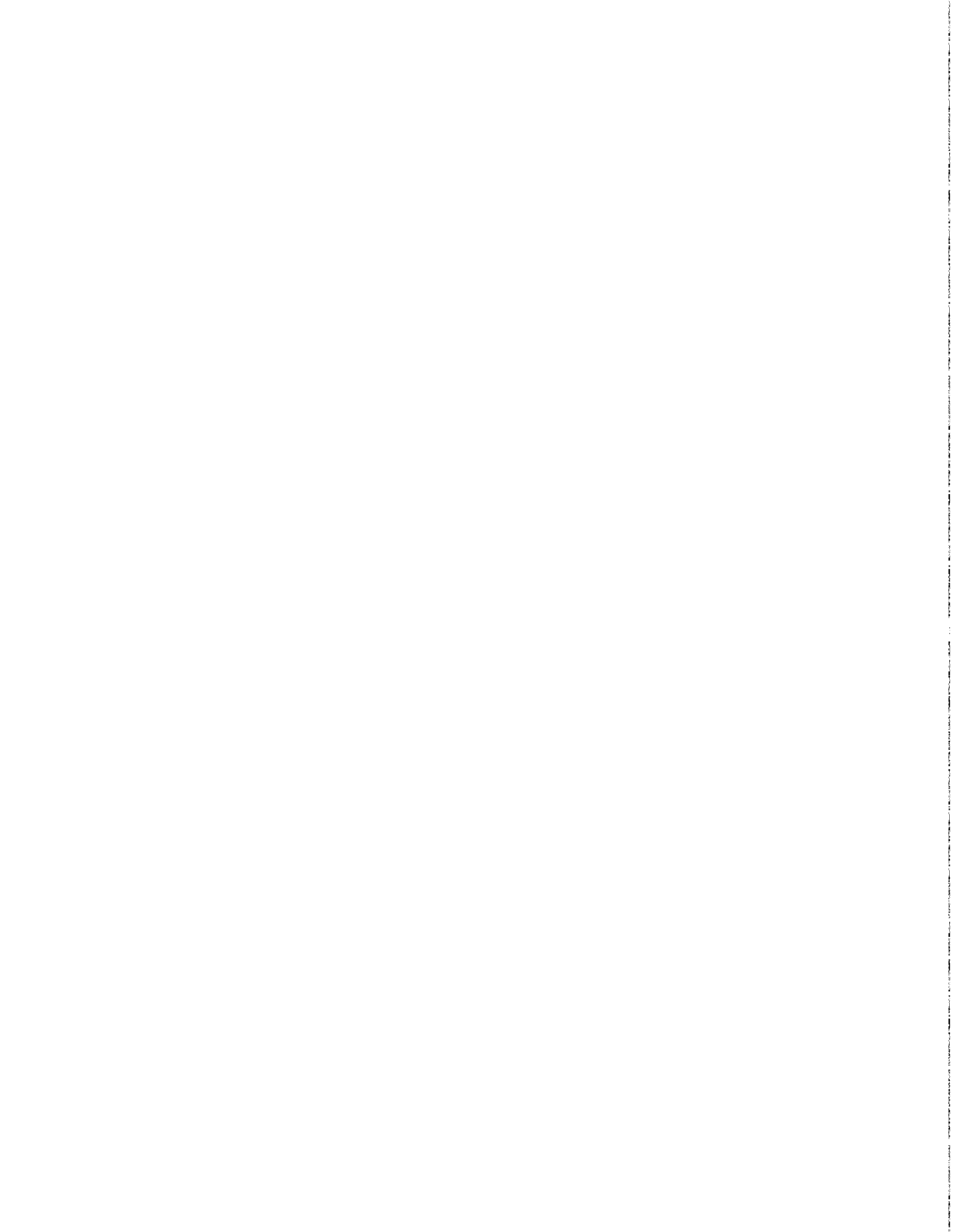
Major Contributors to This Report

Resources,
Community, and
Economic
Development Division,
Washington, D.C.

Peter Guerrero, Associate Director
Steve Elstein, Assistant Director
Lynne Pollock, Evaluator-in-Charge
Angela Crump, Evaluator

Boston Regional Office

Ellen Crocker, Regional Assignment Manager
Les Mahagan, Evaluator



Ordering Information

The first five copies of each GAO report are free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20877**

Orders may also be placed by calling (202) 275-6241.

**United States
General Accounting Office
Washington, D.C. 20548**

**Official Business
Penalty for Private Use \$300**

**First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100**
