

Audit of the EPA's Water Infrastructure Set-Aside Grants to Tribes

June 16, 2025 | Report No. 25-P-0036



Report Contributors

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Abbreviations

CWISA	Clean Water Indian Set-Aside
CWSRF	Clean Water State Revolving Fund
DWIG-TSA	Drinking Water Infrastructure Grant—Tribal Set-Aside
DWSRF	Drinking Water State Revolving Fund
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
IHS	Indian Health Service
IJA	Infrastructure Investment and Jobs Act
OIG	Office of Inspector General
OW	Office of Water
Pub. L.	Public Law
SDS	Sanitation Deficiency System
SRF	State Revolving Fund

Key Definitions

Allocation	The process of assigning a cost, or a group of costs, to a federal award. Allocations include the distribution of funds to EPA regional offices.
Appropriation	The process by which Congress gives an agency budget authority by designating and approving spending for a specific purpose, typically determined through appropriation bills each year.
Award	Financial assistance that provides support to accomplish a public purpose. Awards include grants by the federal government to eligible recipients.
Tribes	All federally recognized Indian entities, including Alaska Native Villages.

Cover Image

Photo of a water treatment plant. (EPA image)

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At a Glance

Audit of the EPA's Water Infrastructure Set-Aside Grants to Tribes

Why We Did This Audit

The U.S. Environmental Protection Agency Office of Inspector General conducted this audit to determine the extent to which the EPA prioritizes and awards Infrastructure Investment and Jobs Act funds to tribes through the Clean Water Indian Set-Aside Grant Program and the Drinking Water Infrastructure Grants—Tribal Set-Aside Program, in accordance with applicable statutes, regulations, and EPA guidance.

According to the EPA, tribes have historically been underserved, overburdened communities. The two programs provide funding to tribes to address critical water infrastructure projects. The EPA Office of Water allocates funds to the EPA regional offices, which coordinate with the Indian Health Service to prioritize and award funds for tribal water infrastructure projects.

The Infrastructure Investment and Jobs Act provides an influx of \$868.5 million to these programs across five fiscal years to address water infrastructure needs and provide clean and safe water to tribes.

To support this EPA mission-related effort:

- *Ensuring clean and safe water.*

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What We Found

The EPA's Infrastructure Investment and Jobs Act, or IIJA, funds for the Clean Water Indian Set-Aside, or CWISA, Program and the Drinking Water Infrastructure Grants—Tribal Set-Aside, or DWIG-TSA, Program, collectively referred to as the tribal set-aside programs, were not awarded in a timely manner. About \$86.3 million, or roughly 57 percent, of the \$152.1 million allocated in fiscal year 2022 IIJA tribal set-aside funds were not awarded to tribes in a timely manner. At the time of our data collection, about \$125.3 million, or roughly 76 percent, of the \$164.1 million allocated in FY 2023 IIJA tribal set-aside funds had not been awarded to tribes. This situation resulted from multiple factors, including that the EPA Office of Water did not allocate DWIG-TSA IIJA funds to the EPA regional offices within 30 days of receiving its annual appropriations, in part because of steps added to the allocation process following enactment of the IIJA. Furthermore, these offices need additional guidance to identify and prioritize projects for the IIJA Emerging Contaminants and Lead Service Line Replacement funds. As of December 2023, about \$140.6 million, or roughly 93 percent, of \$152.0 million of the FYs 2022 and 2023 DWIG-TSA funds allocated for emerging contaminants and lead service line replacements had not been awarded to tribal projects. These factors hindered the regional offices' ability to award funds to tribes.

Seven of the regional offices could not provide documentation of their pre-award decision-making processes for FY 2022 CWISA or DWIG-TSA IIJA awards as required. These offices awarded a combined total of about \$31.9 million in FY 2022 IIJA tribal set-aside funds. Four of the ten regional offices have not developed a quantifiable method to prioritize projects according to severity of health risks per the DWIG-TSA program guide; however, they awarded DWIG-TSA IIJA funds of about \$19.2 million in FYs 2022 and 2023. These outcomes occurred because the Office of Water has not provided guidance for pre-award decision-making documentation in the CWISA and DWIG-TSA program guides or ensured that the regional offices have developed a quantifiable prioritization method for drinking water projects. Without documentation of the rationale and relevant supporting data used in pre-award decision-making and the required quantifiable prioritization method, projects that address less severe health risks could be funded at the expense of projects that address more severe health risks.

If the EPA does not properly oversee the tribal set-aside programs, IIJA funds may not reach tribes in a timely manner, and the Agency cannot ensure that the most critical water projects are funded.

Recommendations and Planned Agency Corrective Actions

We recommend that the assistant administrator for Water develop a process to ensure that IIJA tribal set-aside program funds are allocated to the regional offices in a timely manner; evaluate the new CWISA guidance; determine what additional guidance is needed for the DWIG-TSA IIJA Emerging Contaminants and Lead Service Line Replacement funds and develop needed guidance; provide guidance to regional offices regarding pre-award recordkeeping requirements; and ensure that EPA Regions 3, 5, 6, and 8 establish a quantifiable method to prioritize drinking water projects. Four of the recommendations are resolved with corrective actions pending. Two of the recommendations are unresolved, and resolution efforts are in progress.



OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

June 16, 2025

MEMORANDUM

SUBJECT: Audit of the EPA's Water Infrastructure Set-Aside Grants to Tribes Report No. 25-P-0036

FROM: Nicole N. Murley, Acting Inspector General *Nicole N. Murley*

TO: Peggy S. Browne, Acting Assistant Administrator
Office of Water

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency Office of Inspector General. The project number for this audit was OA-FY23-0082. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures. The Office of Water is responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable planned corrective actions and estimated milestone dates for Recommendations 1, 2, 3, and 4. These recommendations are resolved. A final response pertaining to these recommendations is not required; however, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response.

Action Required

Recommendations 5 and 6 are unresolved. EPA Manual 2750 requires that recommendations be resolved promptly. Therefore, we request that the EPA provide us within 60 days its responses concerning specific actions in process or alternative corrective actions proposed on the recommendations. Your response will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epaoig.gov.

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Chapter 1

Introduction

Purpose

The U.S. Environmental Protection Agency Office of Inspector General initiated this audit to determine the extent to which the EPA prioritizes and awards Infrastructure Investment and Jobs Act, or IIJA, funds to tribes through the Clean Water Indian Set-Aside, or CWISA, Program and the Drinking Water Infrastructure Grants—Tribal Set-Aside, or DWIG-TSA, Program in accordance with applicable statutes, regulations, and EPA guidance. These two programs are collectively referred to as the tribal set-aside programs.

Background

Water Issues for Tribes and Barriers to Addressing Water Issues

According to the Indian Health Service, or the IHS, an agency within the U.S. Department of Health and Human Services, many tribal members do not have access to safe drinking water or wastewater disposal in their homes, and approximately 41,000 tribal homes lack adequate sanitation facilities, with about 5,200 of these homes lacking access to safe water, wastewater-disposal facilities, or both.¹ Further, according to the EPA, many tribal communities that lack crucial access to clean and safe water are also vulnerable to exposure to contaminants, such as lead and per- and polyfluoroalkyl substances—long-lasting chemicals present in our water that can lead to adverse health outcomes. Many water system operators and communities are not familiar with emerging contaminants like per- and polyfluoroalkyl substances and the best treatment solutions or remediation options for them. Additionally, some communities do not know where their lead service lines are located or whether they even have them.

CWSRF definition of emerging contaminants

Emerging contaminants refer to substances and microorganisms, including manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear materials, which are known or anticipated in the environment, that may pose newly identified or reemerging risks to human health, aquatic life, or the environment. Examples of these chemicals and substances are in some compounds of personal care products, pharmaceuticals, industrial chemicals, pesticides, and microplastics.

EPA Office of Water Memorandum, *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law*, March 8, 2022

¹ The phrases **tribal members** and **tribal communities** refer to those who are part of federally recognized Indian entities, including Alaska Native Villages.

In its fiscal years 2022–2026 strategic plan,² the EPA stated that tribal members, people of color, and individuals in low-income, smaller, and rural communities are disproportionately impacted by water-related challenges and have historically faced barriers in accessing water infrastructure funds. According to the National Tribal Water Council,³ barriers to accessing federal funds among tribes include difficulties in identifying, applying for, and securing federal resources specifically available to tribes. Barriers to accessing safe drinking water and wastewater disposal for tribal communities include a lack of training and professional development for qualified tribal water and wastewater operators and a significant shortfall of funds to address water infrastructure needs.

According to some National Tribal Water Council and other tribal members,⁴ additional barriers include correctly completing applications for federal grants, meeting the qualifications required for the grants, and receiving federal funds for water infrastructure projects that serve small tribal communities, as the IHS often prioritizes projects for larger tribal communities. An additional barrier, according to the IHS, is that many of the tribal homes without water-supply or wastewater-disposal facilities are located in remote locations. The cost to construct facilities in remote locations is significantly higher than to build similar facilities in other geographic locations.

For tribes, water is essential to public health, environmental protection, cultural activities, and subsistence practices.

EPA-823-F-21-003, *Strengthening the Nation-To-Nation Relationship with Tribes to Secure a Sustainable Water Future: EPA Office of Water Action Plan*, October 2021

The EPA and the IHS coordinate efforts to address water infrastructure needs in tribal communities. The IHS tracks the needs of these communities, and, as of December 2021, it reported a need of about \$3.4 billion to fund 1,513 tribal projects. However, according to the U.S. Department of Health and Human Services OIG, the cost for improved infrastructure for tribes increased with inflation and the identification of more projects, and in 2022, the reported need was about \$4.4 billion.

The importance of clean and safe water

Clean and safe water is a vital resource that is essential to the protection of human health. Without clean water, communities and economies cannot thrive. According to the EPA's FY 2022–2026 strategic plan, the EPA is committed to ensuring clean and safe water for all, especially for vulnerable communities of color, underserved communities, and tribal communities.

² Published March 2022.

³ The **National Tribal Water Council** is a body of tribal water professionals that can provide technical, scientific input to both tribal leaders and the EPA.

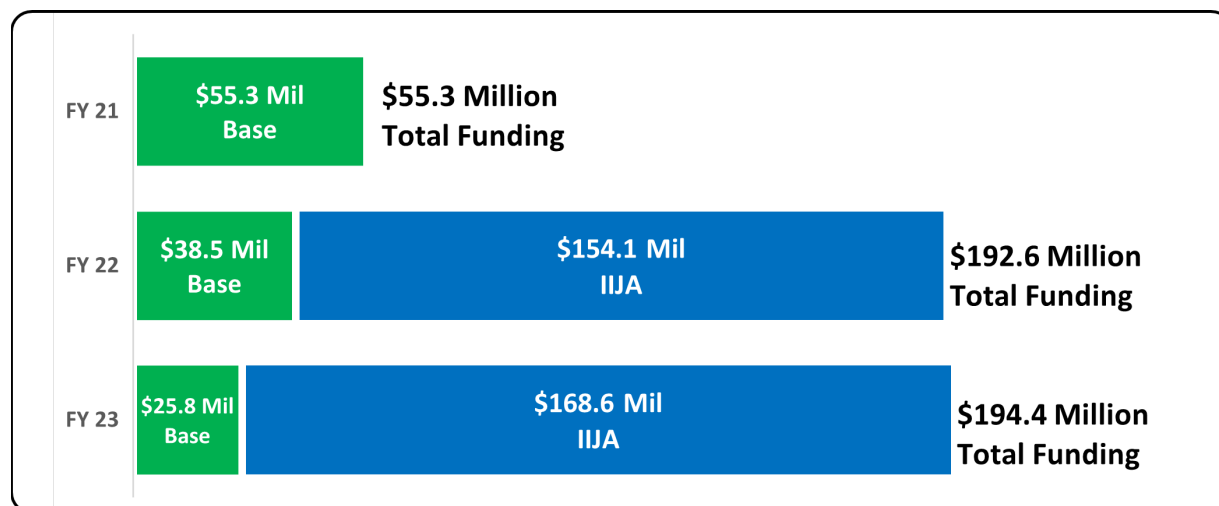
⁴ We interviewed members of the Lummi Nation, the Tulalip Tribes, the Kansas Kickapoo Tribe, and the National Tribal Water Council.

The Infrastructure Investment and Jobs Act Supplements EPA Funds for Tribal Water Infrastructure Projects

The IIJA, Pub. L. 117-58, was signed into law on November 15, 2021. It provided the EPA with over \$60 billion to invest in environmental programs, including approximately \$50 billion for water projects, which is the single largest investment in water that the federal government has ever made. In recent years, the EPA's total annual appropriation has ranged from about \$8.2 billion in FY 2014 to about \$10.1 billion in FY 2023. A key priority of the IIJA is to ensure that disadvantaged, including tribal, communities benefit equitably from this historic investment in water infrastructure.

In general, water infrastructure funds primarily flow through the Clean Water State Revolving Fund, or the CWSRF, and the Drinking Water State Revolving Fund, or the DWSRF, which were established by the Clean Water Act and the Safe Drinking Water Act, respectively. The Clean Water Act requires and the Safe Drinking Water Act authorizes the EPA to reserve money for tribal water programs prior to allocating funds to the states. The EPA works to address water issues in tribal communities through two tribal set-aside programs: the CWISA Program and the DWIG-TSA Program. Through annual appropriations legislation, Congress authorized the EPA to set aside up to 2 percent of the funds appropriated to the DWSRF, or \$20 million, whichever is greater, for the DWIG-TSA Program and up to 2 percent of the funds appropriated to the CWSRF, or \$30 million, whichever is greater, for the CWISA Program. For FYs 2022 through 2026, the EPA expects to reserve about \$868.5 million, or 2 percent, of the \$43 billion in IIJA CWSRF and DWSRF funds for both tribal set-aside programs. As shown in Figure 1, the CWISA and DWIG-TSA funds were about \$55.3 million in FY 2021, \$192.6 million in FY 2022, and \$194.4 million in FY 2023.

Figure 1: Comparison of tribal set-aside funds for FYs 2021 through 2023



Notes: Mil = Million. The green bars represent tribal set-aside base funds, and the blue bars represent tribal set-aside IIJA funds.

Source: OIG analysis of FYs 2021 through 2023 tribal set-aside data. (EPA OIG image)

The congressionally designated purpose of about \$468.5 million, or over half, of the IIJA tribal set-aside funds is general in nature. These funds, which are referred to in this report as **general supplemental**

funds, may be used for a broad range of projects, such as constructing or improving water systems for tribes. The EPA Office of Water, or OW, directs the regions to use general supplemental funds in the same way as tribal set-aside base appropriation funds, which have supported tribal water systems through the CWISA and DWIG-TSA Programs for decades. The remaining \$400.0 million is reserved for addressing emerging contaminants and to replace lead service lines. Table 1 describes the relevant types of IIJA funds, and Table 2 is a summary of the IIJA tribal set-aside appropriations for FYs 2022 through 2026. There are 574 tribes that may apply for tribal set-aside funds.

Table 1: Relevant types of IIJA funds and their purposes

Types of IIJA funds	Purpose
CWISA general supplemental	To supplement the CWISA base funds used for planning, designing, and constructing wastewater treatment plant facilities that serve tribes.
CWISA Emerging Contaminants	To address emerging contaminants in wastewater systems serving tribes.
DWIG-TSA general supplemental	To supplement the DWIG-TSA base funds that are used to improve public drinking water systems serving tribes, focusing on training and operator certification programs, improving access to drinking water, and facilitating compliance with National Primary Drinking Water Regulations, which are primary standards and treatment techniques that apply to public water systems.
DWIG-TSA Emerging Contaminants	To address emerging contaminants in drinking water systems serving tribes.
DWIG-TSA Lead Service Line Replacement	To address lead service line identification and replacement in drinking water systems serving tribes.

Source: OIG summary of IIJA tribal set-aside funds and their purposes. (EPA OIG table)

Table 2: Summary of IIJA tribal set-aside amounts for FYs 2022 through 2026

Appropriation	FY 2022 (\$)	FY 2023 (\$)	FY 2024 (\$)	FY 2025* (\$)	FY 2026* (\$)	Five year total (\$)
CWISA general supplemental	38,040,000	44,040,000	48,060,000	52,060,000	52,060,000	234,260,000
CWISA Emerging Contaminants	2,000,000	4,500,000	4,500,000	4,500,000	4,500,000	20,000,000
DWIG-TSA general supplemental	38,040,000	44,040,000	48,060,000	52,060,000	52,060,000	234,260,000
DWIG-TSA Emerging Contaminants	16,000,000	16,000,000	16,000,000	16,000,000	16,000,000	80,000,000
DWIG-TSA Lead Service Line Replacement	60,000,000	60,000,000	60,000,000	60,000,000	60,000,000	300,000,000
Total for all appropriations	154,080,000	168,580,000	176,620,000	184,620,000	184,620,000	868,520,000

Note: The FYs 2022 and 2023 CWISA Emerging Contaminants funds were not allocated to the EPA regions until FY 2024.

Source: OIG adapted table from the EPA OW June 28, 2023 [memorandum](#). (EPA OIG table)

* Annual set-aside funds are dependent on percentages established in annual appropriations and cannot be considered final.

EPA tribal set-aside program funds are used to fund planning, design, and construction projects and, subject to EPA eligibility requirements, may also be used to supplement IHS water infrastructure projects or portions of projects that are ineligible for IHS funds. Infrastructure projects that deliver clean water or drinking water to schools, healthcare facilities, community buildings, and nontribal homes are ineligible for IHS funds but may qualify for EPA funds.

The Clean Water Indian Set-Aside Program

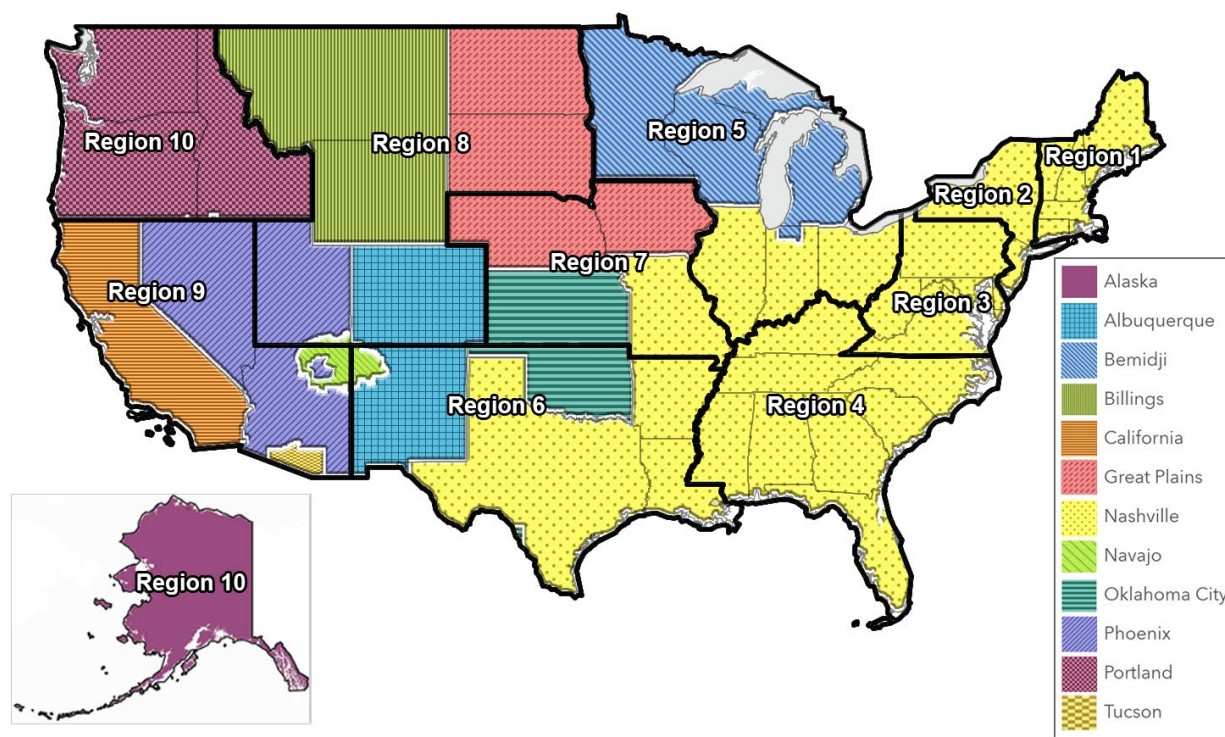
In establishing the CWISA Program through amendments to the Clean Water Act, Congress authorized the EPA to reserve state revolving fund, or SRF, funds for tribes prior to allocating funds to states. To implement this authority, the EPA established the CWISA Program to protect public health and the environment by improving wastewater sanitation facilities for tribes. The EPA works closely with the IHS to administer the CWISA Program, including coordinating projects and selecting which projects receive award funds. To be considered for CWISA funds, tribes must identify their wastewater needs and work with the IHS to have the projects entered in the IHS Sanitation Deficiency System, or SDS, database. The SDS database records wastewater, drinking water, and solid waste deficiencies for tribal projects.

The IHS maintains the SDS database and updates it regularly to account for changing state and federal standards, to add new deficiencies, and to remove deficiencies that have been addressed. Annually, the IHS releases a snapshot of the database called the IHS SDS Project List.⁵ The OW uses this list to determine the amount of CWISA funds that each EPA regional office will receive based on the tribal wastewater needs identified in each IHS area. The regional offices use the IHS SDS Project List to identify and select projects for CWISA funds, except for the IJIA Emerging Contaminants funds because the IHS SDS database had not previously focused on emerging contaminants in drinking water or wastewater.

The OW allocates CWISA funds to the regional offices with specific amounts dedicated to the 12 IHS areas. Because the boundaries of the 12 IHS areas differ from those of the ten EPA regions, the EPA regions must coordinate with each other, as well as with the IHS area offices. Coordination among the regional offices and the IHS area offices is necessary to maximize resources, eliminate duplication of efforts, and advance program goals. Figure 2 illustrates the overlap of the regional offices and IHS areas.

⁵ A public version of the IHS SDS Project List is released annually on the IHS's "Division of Sanitation Facilities Construction" website.

Figure 2: A map displaying the ten EPA regional offices and the 12 IHS areas



Source: The EPA regional offices and IHS areas. (EPA OIG image)

For the CWISA Program, there are two types of IIJA funding, general supplemental and Emerging Contaminants. For FYs 2022 and 2023, the CWISA IIJA general supplemental funds allocated to the regions were about \$38.0 million and \$44.0 million, respectively. The OW did not allocate the \$6.5 million in CWISA IIJA Emerging Contaminants funds to the regional offices during these fiscal years because it was still in the process of developing guidance for these funds. The CWISA IIJA Emerging Contaminants funds for FYs 2022 and 2023 were allocated to the regional offices in February 2024.

Types of clean water projects eligible for funds vary depending on the infrastructure needs of the tribes. Depending on the project type and location, projects on the FY 2022 IHS SDS Project List range in cost from about \$3,000 to \$81 million.

CWISA project examples

Examples of projects from the FY 2022 IHS SDS Project List include:

- Wastewater treatment plant constructions, repairs, or expansions.
- Sewer system repairs and upgrades.
- Piped sewer installation for an entire tribal community.
- Sewer lagoon constructions, expansions, and repairs.
- Washeteria constructions.
- Community septic system improvements.

The Drinking Water Infrastructure Grant—Tribal Set-Aside Program

In establishing the DWSRF Program through amendments to the Safe Drinking Water Act in 1996, Congress authorized the EPA to reserve SRF funds for tribes prior to allocating funds to states. To implement this authority, the EPA established the DWIG-TSA Program. Tribal infrastructure projects on the IHS SDS Project List and projects identified during a solicitation period are eligible for DWIG-TSA funds. Water systems that serve a tribal population are eligible to have projects funded, in whole or in part, with DWIG-TSA funds.

The DWIG-TSA Program calculates the DWIG-TSA regional allocations using formulas that take into account various types of data, including the IHS SDS Project List and the results of the *Drinking Water Infrastructure Needs Survey and Assessment*. The OW conducts the assessment every four years to determine the investment needs of the nation's drinking water infrastructure. The DWIG-TSA funds are allocated to the EPA regions with each receiving 2 percent of the funds, in addition to an amount determined by using an allocation formula, that includes the drinking water infrastructure need cost data and tribal home count data of the ten EPA regions. As with the CWISA Program, the EPA regional offices coordinate with the IHS area offices to fund tribal drinking water infrastructure projects. The DWIG-TSA funds can sometimes be used to fund components of projects that the IHS cannot fund.

The DWIG-TSA IJA general supplemental, Emerging Contaminants, and Lead Service Line Replacement funds totaled about \$114.04 million for FY 2022 and \$120.04 million for FY 2023. These funds are intended to help water systems serving tribes significantly advance public health protections by improving sustainable and resilient access to safe drinking water, promoting compliance with the National Primary Drinking Water Regulations, addressing emerging contaminants in drinking water, and identifying and replacing lead service lines.

The types of drinking water projects vary depending on the infrastructure needs of tribes. Depending on the type and location, projects on the FY 2022 IHS SDS Project List range in cost from about \$6,000 to \$81 million.

DWIG-TSA project examples

Examples of projects from the FY 2022 IHS SDS Project List include:

- Piped water installation for an entire tribal community.
- Water treatment plant constructions, repairs, or expansions.
- Community well installations or relocations.
- Development of new water sources.
- Arsenic removal.
- Water tower improvements.
- Emergency water supply.

The Funding Process for the Tribal Set-Aside Programs

The OW allocates tribal set-aside funds to the regional offices, which are then responsible for prioritizing and selecting projects and awarding funds to tribes. In 2016 and 2010 respectively, annual appropriations legislation authorized the EPA to reserve up to 2 percent of the funds appropriated for the CWSRF and DWSRF Programs for tribal projects through the CWISA and DWIG-TSA Programs. The set-aside percentage in annual appropriations legislation also applies to IIJA funds appropriated for FYs 2022 through 2026.

According to the OW, once annual appropriations legislation is enacted, the EPA is able to develop its budget operating plan. Then the Office of Management and Budget and Congress must review and approve the EPA's budget operating plan before distributing annual funds to the Agency. The EPA Office of the Chief Financial Officer manages the Agency's funds once they are received. At this point, the OW informs the regional offices of the fiscal year funds available for the CWISA and DWIG-TSA Programs. The regional offices then coordinate with the tribes in the regions and IHS to identify tribal water infrastructure projects for both CWISA and DWIG-TSA funds.

Once the EPA regional office selects a tribal project for funding, the tribal government works with the EPA regional office to determine whether it will receive the award through a direct grant or interagency agreement with the IHS. Interagency agreements allow the IHS to administer grant funds to tribes and to assist tribes with project management. Most tribes receive their funds through interagency agreements because they can alleviate the burden of grant and project management, which many tribal governments may not have the capacity to manage.

Program Guidance and Memorandums for the Timely Awarding of Tribal Set-Aside Funds

Both the EPA Program Guidance titled *Clean Water Indian Set-Aside Program Guidance*, dated October 2015, referred to hereafter as the CWISA program guide, and the EPA Program Guidance titled *Drinking Water Infrastructure Grants Tribal Set-Aside Program Revised Guidelines*, dated December 2013, referred to hereafter as the DWIG-TSA program guide, provide information on program purpose, project eligibility, project selection, project award, ongoing project management, and OW and regional office responsibilities. The OW and regional offices rely on the tribal set-aside program guides for direction on how to manage and implement the CWISA and DWIG-TSA Programs. Once the Agency develops its budget operating plan and the OW receives its annual appropriation, the DWIG-TSA program guide advises that the OW should notify the regional offices within 30 days of their DWIG-TSA allocations for the fiscal year. Although appropriations legislation typically makes SRF funds available for an indefinite period, which is why they are known as ***no-year funds***, the OW encourages the regional offices to award the funds in the same fiscal year that they are appropriated or by the end of the following fiscal year at the latest. The OW notes that, if funds are not awarded in a timely manner, they may be rescinded by Congress. As detailed in Table 3, the OW, the EPA Office of Wastewater Management, the EPA Office of the Chief Financial Officer, and the Office of Management and Budget guidance provide additional information regarding the allocation and awarding of CWISA and DWIG-TSA

IIJA funds. The Table 3 list of memorandums related to the IIJA tribal set-aside funds is not exhaustive; however, it includes the memorandums we will refer to throughout this report.

Table 3: A list of memorandums and their significance to the IIJA tribal set-aside funds

Memorandum	Published	Details
<i>Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law</i>	March 8, 2022	This OW memorandum provides general information on how the EPA will award and administer IIJA SRF funds.
<i>Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act</i>	April 29, 2022	This Office of Management and Budget memorandum provides guidance on management of effective, efficient, and equitable IIJA implementation across agencies.
<i>Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law</i>	May 27, 2022	This OW memorandum lists the FY 2022 IIJA funds available to regional offices for the tribal set-aside programs for that year.
<i>Office of Budget, Office of the Controller, Office of Acquisition Solutions, and Office of Grants & Debarment Joint FY 2023 Year-End Closeout Schedule</i>	May 8, 2023	This EPA Office of the Chief Financial Officer memorandum provides guidance on the grant closeout process for the Agency and helps the Agency meet financial reporting requirements. The memorandum specifically addresses no-year IIJA supplemental funds.
<i>Allotments of Tribal Set-Asides of the Drinking Water and Clean Water State Revolving Funds; the Small, Underserved, and Disadvantaged Communities Tribal Grant Program; and the Emerging Contaminants in Small or Disadvantaged Communities Tribal Grant Program</i>	June 28, 2023	This OW memorandum provides the FY 2023 IIJA and base funds available to regional offices for the tribal set-aside programs for that year.
<i>Clean Water Indian Set-Aside – Emerging Contaminants Program Guidance</i>	February 1, 2024	This EPA Office of Wastewater Management memorandum provides FYs 2022 and 2023 CWISA Emerging Contaminant funding distributions across the regional offices, funding eligibility guidance, and project prioritization guidance.
<i>Fiscal Year 2024 Allotments of Tribal Set-Asides of the Drinking Water and Clean Water State Revolving Funds; the Small, Underserved, and Disadvantaged Communities Tribal Grant Program; and the Emerging Contaminants in Small or Disadvantaged Communities Tribal Grant Program</i>	May 22, 2024	This OW memorandum provides the FY 2024 IIJA and base funds available to regional offices for the tribal set-aside programs for that year.

Source: OIG summary of memorandums relevant to the tribal set-aside programs. (EPA OIG table)

An OW memorandum, *Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law*, dated May 27, 2022, referred to hereafter as the FY 2022 annual allocation memorandum, states that IIJA and base funds for the tribal set-aside programs should be

used in a timely and expeditious manner and that the OW is to follow the established program guidance for IIJA funds. Another OW memorandum, *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law*, dated March 8, 2022, referred to hereafter as the IIJA SRF implementation memorandum, issued before the FY 2022 annual allocation memorandum, also emphasizes the importance of the timely distribution of IIJA funds. An Office of Management and Budget memorandum, *Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act*, dated April 29, 2022, states that IIJA funds should be used efficiently and effectively to protect taxpayer dollars. Similarly, an EPA Office of the Chief Financial Officer memorandum, *Office of Budget, Office of the Controller, Office of Acquisition Solutions, and Office of Grants & Debarment Joint FY 2023 Year-End Closeout Schedule*, dated May 8, 2023, provides that IIJA funds should be obligated during the first two fiscal years of availability, although the memorandum clarifies that IIJA funds will not be swept if not obligated after two fiscal years.

IIJA implementation represents a historic opportunity to rebuild our Nation's infrastructure. Implementation needs to be efficient and effective to deliver the best results, protect taxpayer dollars, and ensure public trust.

Office of Management and Budget M-22-12, *Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act*, dated April 29, 2022

EPA Staff Are Required to Document Supporting Rationale and Data Used for Decisions

The Federal Records Act states that agencies must preserve records containing adequate and proper documentation of the organization, including decisions and essential transactions. The EPA *Records Management Policy*, dated July 7, 2005, was created to implement Federal Records Act requirements. It requires all EPA offices to create, receive, and maintain records that provide adequate and proper documentation and evidence of the EPA's activities and decisions. It further states that the Agency must retain records, such as correspondence, presentations, meeting minutes, telephone logs, data, spreadsheets, working papers, reports, drafts, annotations, and other notes, that are needed to document the rationale and relevant supporting data for important Agency decisions.

According to the policy, records typically include information that is created while conducting Agency business, received for action, needed to document EPA activities and decisions, required to support the EPA's financial and other obligations and legal claims, or communicated to assert EPA requirements or guidance. Records are used to document the formulation and execution of policies, decisions, and actions and to allow Congress and other government agencies to assess the EPA. Additionally, records capture the EPA's institutional memory, preserve the historical records, and are considered critically important in ensuring that the Agency continues to function effectively and efficiently.

EPA Regional Offices Are Required to Develop a Quantifiable Prioritization Method for Awarding Drinking Water Projects

The DWIG-TSA program guide states that the regional offices must develop a quantifiable method for prioritizing projects that must be applied to all potential drinking water projects each fiscal year. The regional offices have flexibility in developing their prioritization methods as long as the methods address the most serious risks to human health, are necessary to ensure compliance with the requirements of the Safe Drinking Water Act, and assist the systems most in need. Each regional office's prioritization method should differentiate the projects according to the severity of the health risk to be resolved by the project.

More severe health risks should be resolved before less severe risks, and known threats should be addressed before potential threats. Assuming projects address similar health risks, ranking criteria can help the regional offices select the best projects for funding. Additionally, during the process of developing the quantifiable method for prioritizing projects, each regional office is to allow the OW and tribes served by the regional office to review and comment on the developed method prior to finalization. The DWIG-TSA program guide states that, prior to DWIG-TSA funds being obligated, regional offices must submit their quantifiable methods of prioritizing projects to the OW for approval.

Responsible Offices

The OW is responsible for implementing the tribal set-aside programs. Within the OW, responsibilities for these programs are split between the Office of Wastewater Management and the Office of Ground Water and Drinking Water. The Office of Wastewater Management is responsible for the implementation of the CWISA Program. The focus of this office is to promote effective and responsible water use and wastewater treatment, disposal, and management. The Office of Ground Water and Drinking Water is responsible for the implementation of the DWIG-TSA Program. Together with states, tribes, and other partners, the Office of Ground Water and Drinking Water works to ensure safe drinking water and to protect ground water.

The OW provides oversight for the tribal set-aside programs. This oversight, according to the OW, includes the development of the program guides, which provide instructions and guidelines for the regional offices to prioritize projects for tribal set-aside funding. Additional oversight from the OW includes reviewing and evaluating proposed projects to fund, developing annual allocation memorandums, monitoring and reporting program progress, and meeting with the regional offices to track projects and resolve problems encountered during implementation. The OW added that it holds virtual meetings each month and in-person meetings every two years with tribal set-aside staff.

The regional offices are responsible for the prioritization and selection of tribal projects, the awarding of CWISA and DWIG-TSA funds to tribes, and the coordination with the IHS and tribes.

Scope and Methodology

We conducted this performance audit from June 2023 to January 2025 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed the internal controls necessary to satisfy our audit objective. In particular, we assessed the internal control components—as outlined in the U.S. Government Accountability Office’s *Standards for Internal Control in the Federal Government*—significant to our audit objective. Any internal control deficiencies we found are discussed in this report. Because our audit was limited to the internal control components deemed significant to our audit objective, it may not have disclosed all internal control deficiencies that may have existed at the time of the audit.

For this audit, we focused on IIJA tribal set-aside funds for FYs 2022 and 2023. We focused on these fiscal years because the IIJA tribal set-aside funds were first available in FY 2022 and, at the time we collected financial award data from the EPA, had yet to be available for FY 2024.

We reviewed statutes, policies, procedures, and guidance applicable to the audit objective. Specifically, we reviewed the IIJA, the Clean Water Act, the Safe Drinking Water Act, the CWISA and DWIG-TSA program guides, regional DWIG-TSA prioritization methods, and the IHS SDS program guide to obtain an understanding of the tribal set-aside programs, including their processes for prioritizing and awarding funds to address tribal water infrastructure issues. We also reviewed OW and Office of Management and Budget memorandums regarding the tribal set-aside programs and the IIJA. We analyzed the publicly available FY 2021 and FY 2022 IHS SDS Project Lists to gain an understanding of the water infrastructure needs of tribes across the nation.

We requested that the OW provide us with the IIJA award amounts made to tribes, and the OW informed us that it was not able to provide project information, such as award amounts, because the data system for the tribal set-aside program was being upgraded and was not available at the time for use. The OW further explained that the information was more readily available at the regional office level and provided contact information for personnel in the regional offices. We collected and analyzed regional financial data to determine the IIJA funds awarded to tribes to address water infrastructure improvement projects. Because the award amounts were reported by the regional offices, the financial data were not verified by the OW. We judgmentally selected and analyzed eight IIJA grant agreements from Regions 5, 7, 9, and 10 to verify the accuracy of financial data reported by the regional offices. We also collected information from each regional office and the OW to determine how the tribal set-aside programs function.

We interviewed OW personnel to gain an in-depth understanding of the tribal set-aside programs. We also consulted with the OW and the EPA Office of International and Tribal Affairs about conducting site visits with tribes since the Office of International and Tribal Affairs works closely with federally

recognized tribes. We interviewed EPA personnel that serve on the Tribal Infrastructure Task Force to gain an understanding of the role that the task force has in addressing tribal water infrastructure issues.⁶ We interviewed personnel from Regions 7 and 10 since we conducted site visits in these regions. We also interviewed the tribal set-aside staff located in Anchorage, Alaska, because the OW allocated a large portion of the tribal set-aside funds to this area.

We interviewed IHS staff since they coordinate with the regional offices to administer the tribal set-aside programs. We also interviewed National Tribal Water Council members, who serve as advocates for the best interests of the tribes in matters pertaining to water, to gain an understanding of tribal water infrastructure issues and barriers that the tribes face in addressing those issues. We conducted site visits and interviewed members of the Lummi Nation, the Tulalip Tribes, and the Kansas Kickapoo Tribe to gain their perspectives on water infrastructure and the tribal set-aside programs. We determined the site visits by selecting tribes based on their locations, the projects on the IHS SDS Project List, the amount of IIJA funds allocated to the regional offices, and the amount of IIJA funds that the regional offices awarded to the tribes.

Prior Reports

In EPA OIG Report No. [23-P-0022](#), *The EPA Could Improve Its Review of Drinking Water State Revolving Fund Programs to Help States Assist Disadvantaged Communities*, issued July 11, 2023, we found that two of the seven states we reviewed, Alabama and Maryland, did not consistently meet their requirements to award loan subsidies to disadvantaged communities and other eligible recipients for state FYs 2017 through 2020. By 2019, Maryland completed corrective actions to address this issue. We identified barriers to meeting the loan subsidies requirements, including inadequate oversight by the EPA regional offices and underuse of set-asides by the states, and made three recommendations to address these barriers. The EPA agreed with all three recommendations and completed all corrective actions.

In EPA OIG Report No. [21-E-0254](#), *Pandemic Highlights Need for Additional Tribal Drinking Water Assistance and Oversight in EPA Regions 9 and 10*, issued September 27, 2021, we found that the coronavirus pandemic negatively impacted the oversight and assistance that Regions 9 and 10 provided to the tribal drinking water systems under their purview, as well as the capacity of these systems to provide safe drinking water. Specifically, the pandemic limited the regional offices' ability to provide technical and compliance assistance, conduct sanitary surveys and inspections, and address previously identified program deficiencies. The pandemic also underscored the limitations of EPA resources and tribal drinking water systems' capacity and resilience. We made ten recommendations, and the Agency completed all corrective actions.

⁶ The Tribal Infrastructure Task Force is a multiagency group established in 2007 to coordinate the delivery of water, wastewater, and solid waste infrastructure and management services to tribal communities.

Chapter 2

The Office of Water Did Not Allocate Infrastructure Investment and Jobs Act Tribal Set-Aside Funds in a Timely Manner or Provide Needed Guidance

The EPA's IJA funds for the tribal set-aside programs were not awarded in a timely manner in accordance with the CWISA and DWIG-TSA program guides. Specifically, about \$86.3 million, or roughly 57 percent, of the \$152.1 million allocated in FY 2022 IJA tribal set-aside funds were not awarded to tribes in a timely manner. At the time of our data collection, about \$125.3 million, or roughly 76 percent, of the \$164.1 million allocated in FY 2023 IJA tribal set-aside funds had not been awarded to tribes.⁷ This situation resulted from multiple factors, including that the OW did not allocate DWIG-TSA IJA funds to the regional offices within 30 days of receiving its annual appropriations, in part because of steps added to the allocation process following enactment of the IJA. Furthermore, the regional offices need additional guidance from the OW to identify and prioritize CWISA and DWIG-TSA IJA Emerging Contaminants and DWIG-TSA IJA Lead Service Line Replacement projects. About \$140.6 million, or roughly 93 percent, of \$152.0 million of the FYs 2022 and 2023 DWIG-TSA funds allocated for emerging contaminants and lead service line replacements had not been awarded to tribal projects.⁸ These factors hindered the regional offices' ability to award funds to tribes, and regional offices continue to face challenges in meeting timelines to award funds for tribal projects, which could further extend health disparities for tribal communities facing water infrastructure challenges.

Most Infrastructure Investment and Jobs Act Tribal Set-Aside Funds Were Not Awarded in a Timely Manner

The tribal set-aside program guides, the IJA SRF implementation memorandum, and the FY 2022 annual allocation memorandum each emphasize the importance of obligating tribal set-aside funds to tribes in a timely manner. The CWISA and DWIG-TSA program guides state that the regions are strongly encouraged to select and fund tribal projects the same year funds are appropriated by Congress, and regional offices should obligate all their tribal set-aside funds no later than the end of the subsequent fiscal year. Furthermore, both the FY 2022 annual allocation memorandum and an EPA memorandum titled *Allotments of Tribal Set-Asides of the Drinking Water and Clean Water State Revolving Funds; the Small, Underserved, and Disadvantaged Communities Tribal Grant Program; and the Emerging Contaminants in Small or Disadvantaged Communities Tribal Grant Program*, dated June 28, 2023, referred to hereafter as the FY 2023 annual allocation memorandum, advise regional offices to award IJA funds in a timely manner and by the end of the fiscal year in which the funds were allocated. Funds

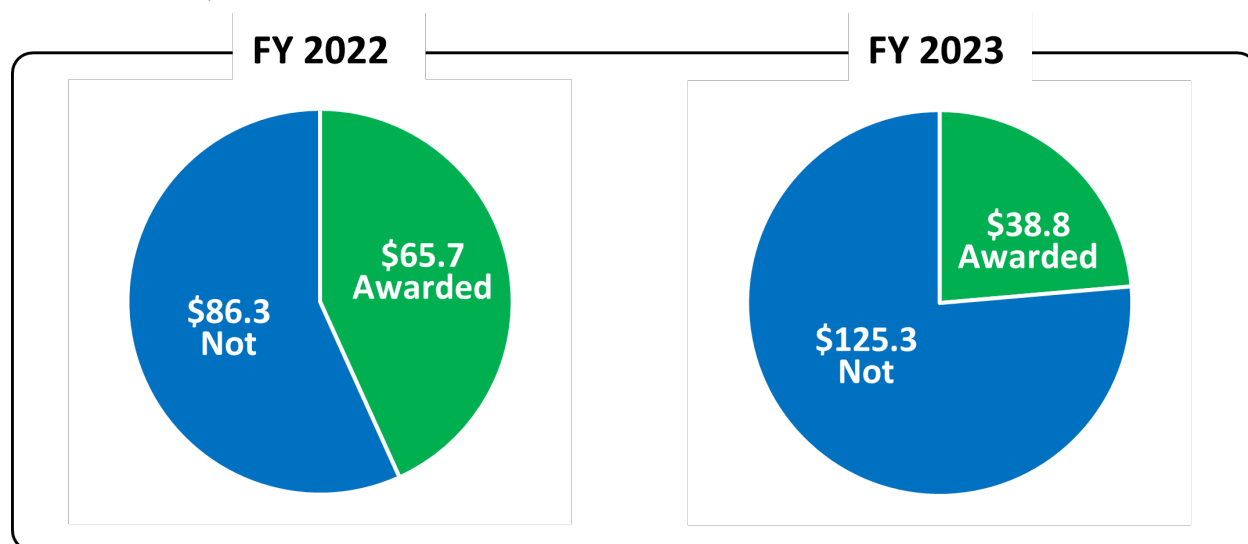
⁷ Awarded amounts are reported as of December 2023. On October 9, 2024, we requested FYs 2022 through 2024 award data from the OW, to be provided by October 18, 2024. The OW requested an extension until December 6, 2024, to complete the data request. In the interest of time, we declined the extension and opted to use data previously gathered.

⁸ *Id.*

not obligated by the end of the subsequent fiscal year are potentially subject to reallocation to different regional offices. Consistent with the program guides and memorandums, in this report we refer to funds awarded within the two-fiscal-year time frame as awarded in a timely manner, and we refer to funds awarded thereafter as not awarded in a timely manner.

For the two fiscal years we reviewed, at the time of our data collection, most of the IIJA tribal set-aside funds had not been awarded. The regional offices did not award most FY 2022 IIJA tribal set-aside funds to tribes in a timely manner. About \$86.3 million, or roughly 57 percent, of the \$152.1 million allocated in FY 2022 IIJA tribal set-aside funds were not awarded to tribes in a timely manner. At the time of our data collection in December 2023, about \$125.3 million, or roughly 76 percent, of the \$164.1 million allocated in FY 2023 IIJA tribal set-aside funds had not been awarded to tribes although regional offices had until the end of FY 2024 to award FY 2023 funds in what is considered a timely manner. Figure 3 shows the FYs 2022 and 2023 IIJA tribal set-aside funds that were awarded and not awarded by the regional offices as of December 2023.

Figure 3: FYs 2022 and 2023 IIJA tribal set-aside funds awarded and not awarded as of December 2023, in millions



Note: FYs 2022 and 2023 CWISA IIJA Emerging Contaminants funds were not allocated to the EPA regional offices until FY 2024 and, as a result, are not included in IIJA totals.

Source: OIG analysis of IIJA tribal set-aside data received from the regional offices. (EPA OIG image)

Regional offices had not awarded about \$211.7 million, or roughly 67 percent, of the \$316.2 million in FYs 2022 and 2023 IIJA tribal set-aside funds allocated to regional offices.⁹ As of December 2023, all ten regional offices had IIJA tribal set-aside program funds remaining from FYs 2022 and 2023 that had not been awarded. Appendix A includes the FYs 2022 and 2023 tribal set-aside allocations to each regional office and awards to tribes.

⁹ These unawarded IIJA funds, as of the December 2023 data, have been identified as funds that could be put to better use because the funds could be awarded more efficiently to accomplish the CWISA and DWIG-TSA program missions.

Of the remaining FYs 2022 and 2023 IJA tribal set-aside funds to be awarded to tribes, a majority were DWIG-TSA IJA Emerging Contaminants and DWIG-TSA IJA Lead Service Line Replacement funds. About \$140.6 million, or roughly 93 percent, of the \$152.0 million set-aside through the DWIG-TSA Program to address emerging contaminants and lead service lines for FYs 2022 and 2023 had not been awarded to tribes as of December 2023. The OW also did not allocate the FYs 2022 and 2023 CWISA IJA Emerging Contaminants funds, about \$6.5 million combined, until February 2024, when the OW issued further guidance for how to award the funds.¹⁰ As of December 2023, about \$21.4 million, or approximately 67 percent, of the \$32.0 million in FYs 2022 and 2023 DWIG-TSA IJA Emerging Contaminants funds had not been awarded to tribes. The regional offices only began awarding DWIG-TSA IJA Lead Service Line Replacement funds to tribes in September 2023 to conduct lead service line inventories. As a result, about \$119.2 million, or 99 percent, of the \$120.0 million in FYs 2022 and 2023 DWIG-TSA IJA Lead Service Line Replacement funds had not been awarded to tribes.¹¹

The Office of Water Did Not Allocate Drinking Water Infrastructure Grant—Tribal Set-Aside Funds Within 30 Days or Provide Needed Guidance to the Regional Offices

The OW did not allocate DWIG-TSA funds to regional offices in accordance with the program guide or provide to the regional offices the guidance needed to prioritize and award the IJA Emerging Contaminants and IJA Lead Service Line Replacement funds. To meet the goals of the tribal set-aside programs, it is critical that tribes are awarded funds in a timely manner. To accomplish this, the OW should allocate DWIG-TSA funds to the regional offices in accordance with the program guide, which indicates that the OW will allocate funds within 30 days of receiving its annual appropriation or approval of its budget operating plan. Furthermore, the OW should provide additional guidance to identify and prioritize projects to receive IJA Emerging Contaminants and IJA Lead Service Line Replacement funds.

The Office of Water’s Drinking Water Infrastructure Grant—Tribal Set-Aside Funding Allocations Are Not Issued in Accordance with Program Guide Time Frames

The CWISA and DWIG-TSA program guides both state that the OW will issue an annual allocation memorandum with funding allocations. However, the expectations regarding when the OW annual allocation memorandum should be issued to the regions differ between the two program guides. The DWIG-TSA program guide says the annual “allocation memorandum will be completed within 30 days of when EPA has received its annual budget appropriation.” The DWIG-TSA program guide also states that this memorandum will be sent to the regional offices “within 30 days of when EPA’s annual

¹⁰ According to the OW, the CWISA IJA Emerging Contaminants funds were not allocated until February 2024 because the IHS SDS program has not previously considered emerging contaminants in wastewater and the EPA was assessing the best programmatic approaches and procedures to consider tribal set-aside emerging contaminants projects. These unawarded IJA funds, as of the December 2023 data, have been identified as funds that could be put to better use because the funds could be awarded more efficiently to accomplish the CWISA Program mission.

¹¹ Awarded amounts are as of December 2023.

appropriation is finalized.” The CWISA program guide does not state when the OW will notify regions of their annual CWISA allocation. However, since IJIA funding began in FY 2022, the OW has issued the CWISA and DWIG-TSA IJIA funding allocations together in the annual allocation memorandum.

While the DWIG-TSA program guide uses different starting points for the expected timeline for the OW to issue the annual allocation memorandum, we calculated the number of days between when the OW received its annual appropriation and when the OW issued the DWIG-TSA annual allocation memorandum, or in FYs 2022 and 2023, the combined CWISA and DWIG-TSA annual allocation memorandum. By using the date on which the EPA received access to its annual appropriated funds as the start of the 30-day timeline, we are giving the OW the most time possible to meet this guidance. We use this date because there are multiple steps in the budget process before the OW receives its annual appropriation, including the development and approval of the budget operating plan. The OW did not issue the FYs 2022 and 2023 annual allocation memorandums within 30 days of receiving its annual appropriation. For the three fiscal years prior to the enactment of the IJIA, the OW allocated DWIG-TSA annual funds to the regional offices sometime between February and April.¹² For FYs 2022 and 2023, the OW allocated IJIA and base funds for both tribal set-aside programs to regional offices in May and June, 39 and 120 days, respectively, after receiving its annual appropriation.¹³ The FYs 2022 and 2023 CWISA IJIA Emerging Contaminants funds are an exception, as they were not allocated until February 2024.¹⁴ In January 2024, in response to our questions about the process of issuing the annual allocation memorandum, the OW stated that it was unaware that it should issue the DWIG-TSA annual allocation memorandum within 30 days of receiving its annual appropriation and added that it issues the tribal set-aside allocation memorandums as quickly as possible each fiscal year.

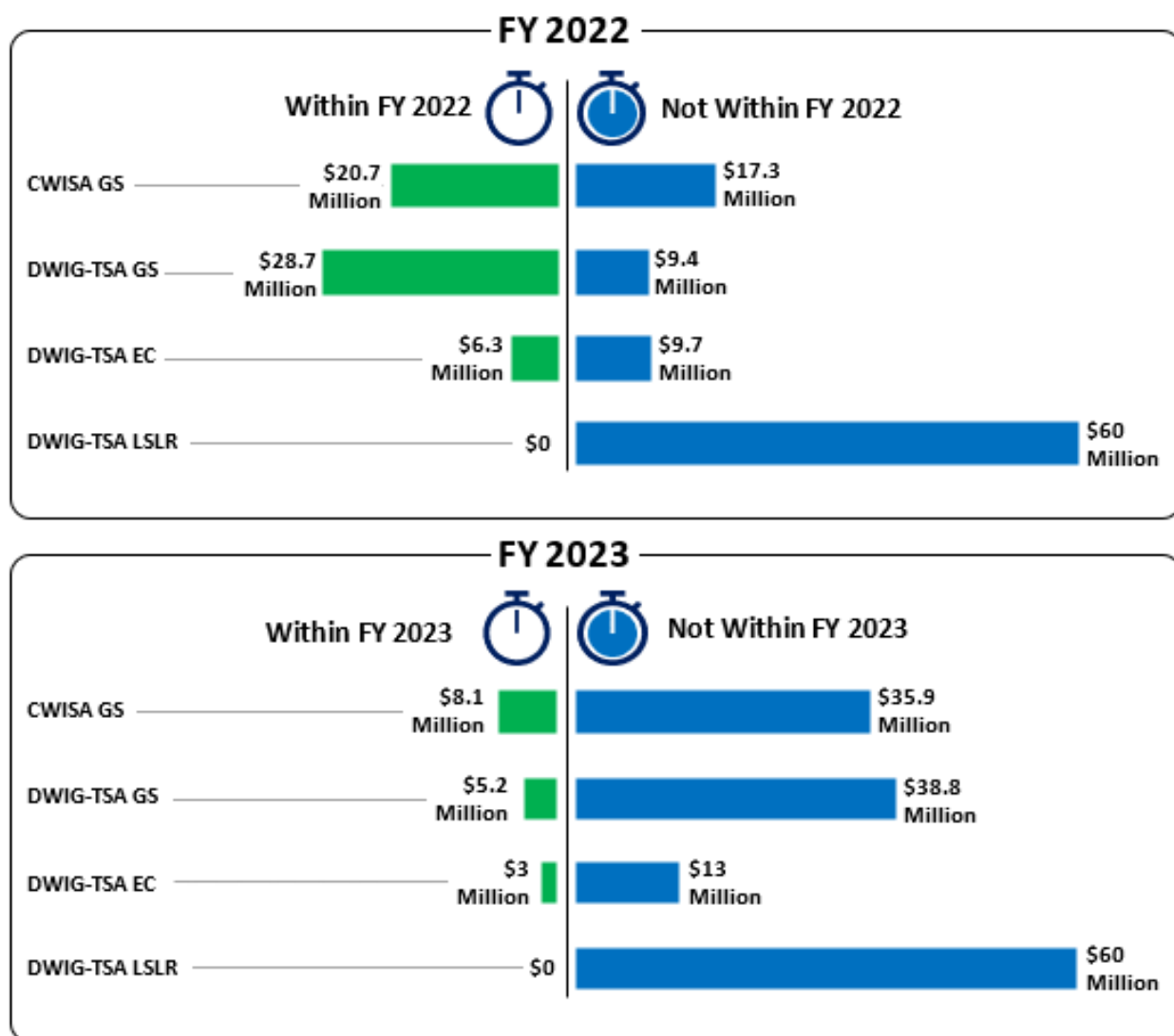
In FY 2023, the regional offices had approximately three months to award about \$164.1 million in tribal set-aside funds, in addition to about \$25.8 million in base funds, to tribes before the end of the fiscal year as is recommended and encouraged by the program guides and annual allocation memorandum. Regional offices reported that this was not enough time to award all tribal set-aside funds by the end of the fiscal year. Figure 4 shows the FY 2022 IJIA tribal set-aside funds that were awarded within FY 2022 and after FY 2022. Figure 5 details the same information for FY 2023. According to the OW, regional offices are advised to award older funds prior to awarding newer funds; therefore, it is not surprising that a smaller proportion of FY 2023 funds was awarded within FY 2023 than FY 2022 funds within FY 2022.

¹² According to the EPA, the FY 2019 allocation was in April, the FY 2020 allocation was in February, and the FY 2021 allocation was in April.

¹³ According to the EPA, the FY 2022 IJIA funds were apportioned to the Agency by the Office of Management and Budget in February 2022, and the FY 2023 IJIA funds were apportioned to the Agency in October 2022. The FY 2022 allocation for all IJIA and base funds was in May and the FY 2023 allocation for all IJIA and base funds was in June.

¹⁴ According to the OW, the CWISA IJIA Emerging Contaminants funds were not allocated until February 2024 because the IHS SDS program had not previously considered emerging contaminants in wastewater and the EPA was assessing the best programmatic approaches and procedures to consider tribal set-aside emerging contaminants projects.

Figures 4 and 5: The IJA tribal set-aside funds awarded within and not within the fiscal year



Notes: Totals are rounded. The bars on the left, shown in green, represent IJA funds awarded by the end of the fiscal year in which they were allocated. The program guides state that the regions are strongly encouraged to select and fund tribal projects the same year funds are appropriated by Congress, and regional offices should obligate all their tribal set-aside funds no later than the end of the subsequent fiscal year, although IJA funds are no-year funds and will not be swept after the first two years. The bars on the right, shown in blue, represent IJA funds awarded after the first fiscal year of availability or funds that have not yet been awarded to tribes. CWISA IJA Emerging Contaminants funds were not allocated to the regional offices until FY 2024 and, as a result, are not included in IJA totals.

GS = General Supplemental, EC = Emerging Contaminants, LSLR = Lead Service Line Replacement.

Source: OIG analysis of FYs 2022 and 2023 tribal set-aside IJA award data. (EPA OIG images)

According to the OW, there are normal and IJA-specific variations in the allocation process that may delay the distribution of funds to the regional offices. Factors that cause such variations include:

- The steps added to the allocation process since enactment of the IJA. After the enactment of the IJA, the tribal set-aside annual allocation memorandums have required that the assistant

administrator sign and the Office of Management and Budget review the memorandums before they are distributed. These memorandums previously only required the division director to sign them. The additional steps may delay the allocation of funds.

- The timing of the passage of annual appropriations legislation. For example, the EPA cannot allocate annual tribal set-aside amounts based on temporary funding legislation such as continuing resolutions.
- The timing of the IHS's release of the annual IHS SDS Project List. The timing of the release varies from year to year. This can delay allocation because the list is used to determine the funding needs of tribes across the nation.

The OW indicated that additional factors affect the allocation process, including the manner in which the OW decides to issue policy communications, for example, issuing one memorandum that applies to multiple programs to save resources and staff time. Another factor is the amount of information and guidance the OW decides to provide to the regional offices in the annual allocation memorandum. For example, the FY 2023 annual allocation memorandum provides program guidance for the CWISA Program, the DWIG-TSA Program, and another program called the Emerging Contaminants in Small or Disadvantaged Communities Tribal Grant Program. According to the OW, detailing minute statutory or appropriation changes relevant to regional staff in funding memorandums, even in the interest of providing clear guidance, may require additional reviews by the legal team and lengthen the memorandum development process.

As the IIJA was enacted in FY 2022, the OW stated that the allocation of FY 2022 funds to the regional offices was delayed because the OW prioritized developing and issuing the SRF allocation memorandum to precede the tribal set aside allocation memorandum. The OW further stated that the allocation of funds to the regional offices was delayed in FY 2023 because the DWIG-TSA allocation formulas needed to be revised to account for the new IIJA funds. The allocation formulas are used to calculate the funding level appropriate for each regional office considering the tribal infrastructure needs in that region. This revision contributed to the 120-day lag between when the OW received its annual appropriation and when the OW issued the FY 2023 annual allocation memorandum. As a result, the OW issued the memorandum months later than it had released the DWIG-TSA allocation memorandum over the previous three years before the availability of IIJA funds, leaving the regional offices with less time to complete their prioritization and award process before the end of the fiscal year. According to four regional offices that we interviewed or surveyed, the later-than-normal tribal set-aside allocations from the OW, combined with the unchanged deadlines to submit projects for funding, has made it difficult to award all funds before the end of the fiscal year. Specifically, one of the regional offices told us that receiving its allotment late in the fiscal year created significant challenges in awarding all funds prior to the end of the fiscal year while another regional office similarly told us that the late allotment of funds by the OW hindered its ability to provide the funds to tribes.

The OW added that releasing the DWIG-TSA annual allocation memorandum within 30 days of the OW's receipt of its appropriation is not possible with the processes in place at the time of this report. The OW

plans to revise the DWIG-TSA program guide to extend the 30-day timeline. As of June 2024, this update had no scheduled completion date, but according to the OW, it is a priority for the office. The OW did not express plans to revise the CWISA program guide.

Regional Offices Need Additional Guidance from the Office of Water to Award the Infrastructure Investment and Jobs Act Emerging Contaminants and Lead Service Line Replacement Funds

Further impacting the award process, the OW has not provided the regional offices with guidance needed to identify and prioritize tribal water infrastructure projects for the IIJA Emerging Contaminants and IIJA Lead Service Line Replacement funds. The OW has developed some guidance, but several regional offices said they still face challenges in identifying and awarding IIJA funds to tribal infrastructure projects. For example, one regional office said that “better guidance on EPA flexibilities to fund regional [office] priorities” would improve the project selection process. Another regional office said that “more timely program guidance” from the OW would help as it was “still awaiting tribal program guidance for the [CWISA] Emerging Contaminants program.” We conclude from regional office responses that additional, timely guidance is needed to award the tribal set-aside program funds. The OW did not release detailed guidance specific to CWISA IIJA Emerging Contaminants funds until February 2024, two fiscal years after IIJA funds were first apportioned to the EPA. Appendix B includes the guidance that the OW had issued for the IIJA Emerging Contaminants and IIJA Lead Service Line Replacement funds as of November 2024.

The OW’s IIJA SRF implementation memorandum provides a list of project types and activities that would be eligible for IIJA Emerging Contaminants and IIJA Lead Service Line Replacement funds. Seven regional offices shared with us that they struggle to identify eligible tribal projects for Emerging Contaminants and Lead Service Line Replacement funds. In the EPA’s FYs 2022 and 2023 annual allocation memorandums, the OW acknowledged that the CWISA and DWIG-TSA program guides encourage the regional offices to use the IHS SDS Project List to identify projects for funding. The memorandums also noted that the IHS SDS Project List is not useful for identifying projects eligible for IIJA Emerging Contaminants and IIJA Lead Service Line Replacement funds because the IHS SDS Project List had not previously focused on the issues that those appropriations address. Further, the memorandums state that OW is “assessing the best programmatic approaches and procedures to support tribal clean water emerging contaminants projects.”

Seven regional offices said that they received few or no tribal project proposals that are eligible for IIJA Emerging Contaminants or IIJA Lead Service Line Replacement funds and that additional guidance is needed for the regional offices and tribes to identify eligible projects. For example, one region told us that the tribes do not know what to present to the EPA while another region informed us that it faces challenges with identifying eligible projects for new and restrictive grant programs. The OW informed us that it is aware of the need for additional guidance. The Office of Wastewater Management issued the supplemental *Clean Water Indian Set-Aside – Emerging Contaminants Program Guidance* in February 2024, along with the allocation of FYs 2022 and 2023 CWISA IIJA Emerging Contaminants funds, to the regional offices. This memorandum provides a funding eligibility summary, a proposal form

template, and optional project scoring matrices. This guidance was issued after we interviewed and surveyed regional office staff; therefore, we did not assess whether the guidance is sufficient for the prioritization and awarding of funds. According to the OW, it will continue to provide guidance as needed to the regional offices via meetings or written documents to assist them in implementing the DWIG-TSA IIJA Emerging Contaminants and Lead Service Line Replacement funds. Most regions confirmed that the OW holds regular calls with regional office staff, with one region telling us that the OW holds these meetings monthly so they can maintain regular communication with the regional offices and be available to answer any questions. The OW further added that it has been working to develop additional training for regional staff and technical assistance guidance and documents for tribal communities to identify emerging contaminant projects eligible for DWIG-TSA IIJA Emerging Contaminants funds. Because most of these funds have not yet been awarded, exposure to contaminants and lead in tribal water sources can continue to threaten the health of tribal communities.

Delays in Awarding Funds to Address Tribal Water Infrastructure Issues Could Result in Extended Public Health Disparities

The mission of the CWISA and DWIG-TSA Programs is to protect public health for tribes. The OW's delays in allocating IIJA tribal set-aside program funds to the regional offices, along with the lack of needed guidance for those offices to identify and prioritize projects for clean water and drinking water IIJA Emerging Contaminants funds and drinking water IIJA Lead Service Line Replacement funds, have, in turn, delayed the awarding of funds to tribes. Not awarding program funds in a timely manner could result in extended public health disparities for tribal communities facing water infrastructure challenges, such as a lack of safe drinking water or adequate sanitation facilities, and further risks not accomplishing the mission of the tribal set-aside programs.

Recommendations

We recommend that the assistant administrator for Water:

1. Develop a process to ensure that Infrastructure Investment and Jobs Act tribal set-aside program funds are allocated to the regional offices in a timely manner.
2. Determine, based on input from the regional offices, whether the February 2024 supplemental *Clean Water Indian Set-Aside – Emerging Contaminants Program Guidance* adequately clarifies how regional offices are to identify and prioritize Clean Water Indian Set-Aside Infrastructure Investment and Jobs Act Emerging Contaminants funds for eligible projects and update the guidance if needed.
3. Determine, based on input from the regional offices, what additional guidance is needed to clarify how to identify and prioritize Drinking Water Infrastructure Grants—Tribal Set-Aside Infrastructure Investment and Jobs Act Emerging Contaminants funds for eligible projects. Develop and distribute additional guidance as appropriate.

4. Determine, based on input from the regional offices, what additional guidance is needed to clarify how to identify and prioritize Drinking Water Infrastructure Grants—Tribal Set-Aside Infrastructure Investment and Jobs Act Lead Service Line Replacement funds for eligible projects. Develop and distribute additional guidance as appropriate.

Agency Response and OIG Assessment

The Agency agreed with Recommendations 1, 2, 3, and 4. For Recommendation 1, the OW provided acceptable proposed corrective actions and estimated milestone dates. We consider Recommendation 1 resolved with corrective actions pending. The Agency provided acceptable corrective actions for Recommendations 2, 3, and 4 and it considers the corrective actions completed. However, we consider these recommendations resolved and open, pending documentation of the completed corrective actions. We will continue to work with the Agency to verify that it completed the actions. The Agency also provided technical comments, which we reviewed and incorporated as appropriate. Appendix C contains the Agency's response to our draft report.

With respect to the OW's comment that the OIG concludes "more direction is needed without specifying which aspects of the process, program, or guidance lack specificity," we based our conclusion on the regional staff comments. We acknowledge that the OW, as the expert, is better positioned to decide what additional guidance would help to identify and prioritize tribal water infrastructure projects for the IIJA Emerging Contaminants and IIJA Lead Service Line Replacement funds.

Chapter 3

The Office of Water Has Not Always Provided the Necessary Oversight to Assist in Recordkeeping or to Ensure that Program Requirements Are Met

Seven of the regional offices could not provide documentation of their pre-award decision-making processes for FY 2022 CWISA or DWIG-TSA IIJA awards as required by the Federal Records Act and the EPA *Records Management Policy*. These regional offices awarded a combined total of about \$31.9 million in FY 2022 IIJA tribal set-aside funds. Four of the ten regional offices have not developed a quantifiable method to prioritize projects according to the severity of the health risks per the DWIG-TSA program guide; however, they awarded about \$19.2 million in FYs 2022 and 2023 DWIG-TSA IIJA funds. These outcomes occurred because the OW has not provided guidance for pre-award decision-making documentation in the CWISA and DWIG-TSA program guides or ensured that each regional office has developed a quantifiable prioritization method for drinking water projects. Without documentation of the rationale and relevant supporting data used in pre-award decision-making and a quantifiable method for prioritizing drinking water projects, the potential exists that projects addressing less severe health risks will be funded at the expense of projects that address more severe health risks.

Regional Offices Are Not Compliant with Recordkeeping Requirements or the Drinking Water Infrastructure Grant—Tribal Set-Aside Program Guide

Most Regional Offices Could Not Provide Documentation of Their Pre-Award Decision-Making Processes for FY 2022 CWISA or DWIG-TSA IIJA Awards

Most regional offices did not document their rationale or could not provide us with the data used to decide what tribal water infrastructure projects to fund with IIJA funds. We asked the regional offices to provide us with documentation of their coordination with the IHS on project prioritization and selection, including documentation of how project selection decisions were made, for FY 2022 tribal set-aside funds. While some regional offices provided email correspondence as evidence of coordination with the IHS, most of the regional offices could not provide documentation of their pre-award decision-making processes for FY 2022 CWISA or DWIG-TSA IIJA awards. Two regional offices, 1 and 3, did not provide documentation because they did not have any projects to fund or all the projects were funded. Of the remaining eight regional offices, seven were unable to provide the rationale and data used to determine why certain projects were selected and funded over others or why funds were not awarded. Yet, these seven regional offices awarded about \$31.9 million in FY 2022 IIJA tribal set-aside funds.

Region 9 was the only regional office that provided pre-award documentation that included rationale and data used in its decision-making processes for both FY 2022 CWISA and DWIG-TSA IIJA awards. Regions 4 and 7 provided documentation on how decisions of project selection were made for FY 2022 DWIG-TSA IIJA awards, but not for FY 2022 CWISA IIJA awards. Region 5 provided documentation on

how decisions of project selection were made for FY 2022 CWISA IJA awards, but not for FY 2022 DWIG-TSA IJA awards. Regions 2, 6, 8, and 10 did not provide documentation that included rationale and data used in the decision-making process for FY 2022 CWISA and DWIG-TSA IJA awards. Figure 6 identifies whether regional offices documented their decision-making processes for FY 2022 IJA awards.

Figure 6: Regional offices that documented their pre-award decision-making processes for FY 2022 IJA awards and those that did not

	CWISA	DWIG-TSA
Region 1	NA	NA
Region 2	X	X
Region 3	NA	NA
Region 4	X	✓
Region 5	✓	X
Region 6	X	X
Region 7	X	✓
Region 8	X	X
Region 9	✓	✓
Region 10	X	X

Notes: A green check mark indicates that a regional office documented its pre-award decision-making processes for FY 2022 IJA awards. A blue X indicates that the regional office did not document its pre-award decision-making processes for FY 2022 IJA awards. A navy NA indicates that the regional office did not have documentation to provide because there were no projects to fund or all the projects were funded.

Source: OIG analysis of the regional offices that documented their decision-making process for FY 2022. (EPA OIG image)

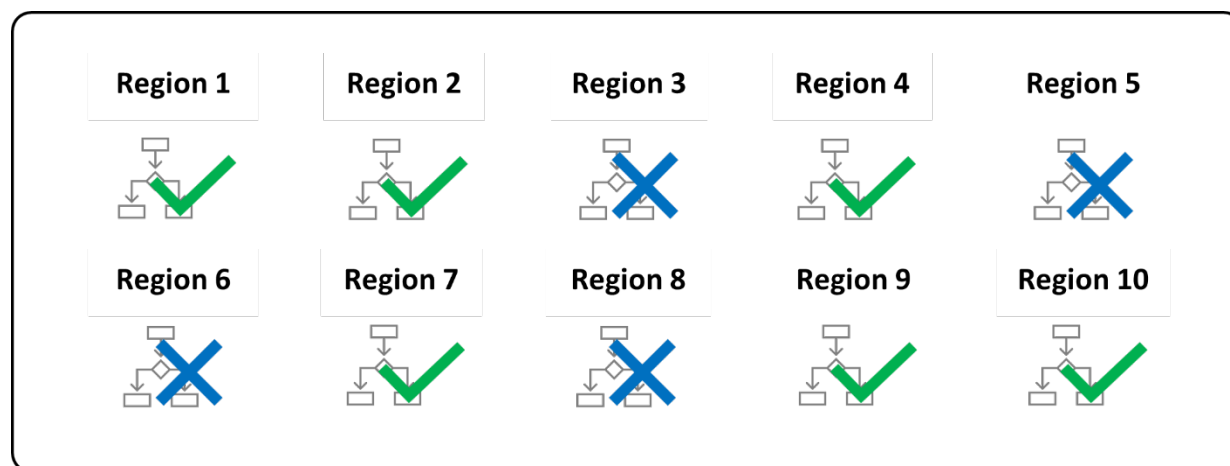
Region 10 staff stated that they follow the CWISA and DWIG-TSA program guides to fund the largest and most imminently needed projects and therefore do not need to document the rationale or data used to determine which tribal projects to fund. Yet, there are many factors that a regional office should consider, per the program guides, when determining whether to fund a project, such as the project's ranking on the IHS SDS Priority List; the project's estimated cost; sources of funding, such as the IHS; and the eligibility of the project in meeting program requirements. Despite these factors, most regional offices do not document the rationale and data used to determine which projects are funded.

According to the OW, it does not review or approve projects that are selected by the regional offices to fund because it has issued guidance for prioritizing projects. The OW added that many projects need to be assessed on a case-by-case basis and that selection is complicated and involves coordination with other agencies and tribes. The OW further stated that it does not know what decision-making documentation the regional offices keep and clarified that decision-making documentation is not kept at EPA headquarters. However, the OW stated that the regional offices are expected to comply with recordkeeping requirements. The lack of documented rationale and data for selecting and funding tribal water infrastructure projects is inconsistent with the requirements of the Federal Records Act and the EPA *Records Management Policy*. Pursuant to the EPA *Records Management Policy*, which implements the Federal Records Act, EPA employees are required to document all substantive decisions and commitments and maintain records necessary to document the rationale and relevant supporting data for important final Agency decisions. Insufficient documentation and recordkeeping practices preclude the OW and other oversight entities, such as the OIG and Congress, from analyzing the supporting rationale and data used in making funding decisions.

Some Regional Offices Did Not Develop a Quantifiable Prioritization Method for Awarding Drinking Water Infrastructure Grant—Tribal Set-Aside Funds

We found that Regions 3, 5, 6, and 8 did not develop and finalize the required quantifiable method to prioritize drinking water projects for awards. The prioritization method should differentiate projects according to the severity of the health risk and be used to determine which projects to fund. Despite not having a quantifiable method, these four regional offices awarded about \$13.5 million in FY 2022 DWIG-TSA IJA funds and about \$5.7 million in FY 2023 DWIG-TSA IJA funds. Figure 7 details which regional offices developed a quantifiable method for prioritization and which offices did not.

Figure 7: Regions that developed a DWIG-TSA regional prioritization method



Note: A green check mark indicates that a region developed a DWIG-TSA regional prioritization method, and a blue X indicates that a regional office did not develop a DWIG-TSA regional prioritization method.

Source: OIG analysis of the regions that developed a DWIG-TSA regional prioritization method. (EPA OIG image)

Regions 5, 6, and 8 stated that they follow the DWIG-TSA program guide; however, these regions did not develop a quantifiable prioritization method, which has been a requirement of the program guide since

2015.¹⁵ Furthermore, the DWIG-TSA program guide uses the IHS SDS Priority List as a tool to prioritize and select projects, but projects do not have to be on the list to receive funds. Tribes can also submit drinking water projects for DWIG-TSA funds during an annual solicitation period. Thus, it is imperative that each regional office develops a quantifiable method for project prioritization since projects to be considered for funds can be from the IHS SDS Priority List or the annual solicitation.

Per the DWIG-TSA program guide, the OW requires that each regional office develop a quantifiable method by which it prioritizes projects for funding. According to the OW, after the revised DWIG-TSA program guide was issued in 2013, the OW followed up with the regional offices to ensure that they had quantifiable methods in place. When we asked why Regions 3, 5, 6, and 8 did not have quantifiable methods to prioritize their projects for funding, the OW stated that the question was better suited for the regions. The OW staff we spoke with noted that the requirement predated them, and they could not explain why the regions did not have the required method of prioritization. However, the OW speculated that Region 3 did not have a quantifiable method of prioritization because Region 3 only started receiving tribal set-aside funds in FY 2021 and prioritization methods take time to develop. The OW added that, as a standard practice, it has not made the allocations of funds to the regional offices contingent upon a provision of updated regional guidance.

Lack of Oversight from the Office of Water

The OW is responsible for overseeing the national tribal set-aside programs and assisting the regional offices to comply with applicable laws, policies, and program guides. For prioritizing and selecting projects for funding in the tribal set-aside programs, the OW described the program guide development as part of its oversight. However, the CWISA and DWIG-TSA program guides do not provide the necessary guidance to instruct the regional offices on relevant pre-award decision-making documentation. The program guides include details for post-award documentation, but not for pre-award documentation. Pre-award documentation provides support and rationale for certain projects receiving funds while others did not, which is needed for accountability and continuity of the programs. According to the EPA *Records Management Policy*, assistant administrators, including the head of OW, as well as regional administrators, are responsible for “[o]verseeing the implementation of a records management program within their area.” The lack of pre-award decision-making documentation for the CWISA and DWIG-TSA Programs could be resolved by updating the program guides or issuing program-specific guidance to assist the regional office staff with the required pre-award documentation, just as the OW has assisted regional office staff in collecting post-award documentation.

¹⁵ Region 6 has a draft quantifiable prioritization method, but only for the projects that have been directly solicited from tribes, and the regional office has not received comments from tribes or the OW on the draft method.

Examples of pre-award and post-award information

Pre-award information:

- Project prioritization and selection.
- Factors for project selection.
- Data used to demonstrate health risks.

Post-award information:

- Tribe name.
- Project description.
- Project timeline and date funds were awarded.
- Delivery of funds; for example, direct grant to tribe or interagency agreement with the IHS.
- Final report.

Another part of the OW's oversight responsibilities is ensuring adherence to the program guides. This includes ensuring that regional offices are developing quantifiable prioritization methods per the DWIG-TSA program guide. The OW stated that it provides feedback when requested on the regional offices' quantifiable prioritization methods. However, when asked why four regional offices did not have prioritization methods, OW staff could not provide an explanation other than stating that the requirement predated them. The OW should take adequate steps to ensure that all regional offices have the required quantifiable method of prioritization and that the tribes in the region and the OW have reviewed the method.

Regional Offices May Not Be Prioritizing Projects and Awarding Infrastructure Investment and Jobs Act Funds in Accordance with the Clean Water Indian Set-Aside and Drinking Water Infrastructure Grant—Tribal Set-Aside Program Guides

Insufficient documentation practices preclude the OW and oversight entities, such as the OIG, from analyzing the supporting rationale and data used in determining funding decisions. For the regional offices that lacked adequate pre-award documentation, it is not possible to determine whether project prioritization guidance was followed for the awarding of critical IJA tribal set-aside funds. Documentation is also important for maintaining institutional memory and continuity of services during staff turnover and ensuring that the Agency continues to function effectively and efficiently.

The regional offices that have not established quantifiable methods of prioritizing projects and awarding DWIG-TSA funds may not be able to differentiate projects according to the severity of health risks. Furthermore, the process of finalizing the quantifiable method of prioritization includes providing the tribes in the region the opportunity to review and comment on the developed method. For the regional offices that have not developed a quantifiable method of prioritization, this means the tribes in the region have not had the opportunity to review and comment on the prioritization method used. Each regional office's prioritization method should differentiate projects from the IHS SDS Priority List and the annual solicitation period by ranking them according to the severity of the associated health risks. By not developing quantifiable methods for prioritizing projects, the four regional offices have essentially required drinking water projects to be on the IHS SDS Project List, which excludes other projects from funding consideration.

The lack of pre-award documentation regarding the rationale and the data used to determine which projects were selected and funded and the lack of region-specific quantifiable methods to prioritize projects increase the risk that tribal set-aside funds will not be used to address the most serious risk to human health as required.

Recommendations

We recommend that the assistant administrator for Water:

5. Provide guidance to the regional offices regarding pre-award recordkeeping requirements for documenting the rationale and data used to determine funding decisions related to the tribal set-aside programs for all Infrastructure Investment and Jobs Act awards.
6. Take adequate steps to ensure that Regions 3, 5, 6, and 8 expeditiously establish quantifiable methods for prioritizing projects to receive Drinking Water Infrastructure Grants—Tribal Set-Aside funds.

Agency Response and OIG Assessment

The Agency partly agreed with Recommendation 5 and disagreed with Recommendation 6. We consider these recommendations unresolved and open. The Agency also provided technical comments, which we reviewed and incorporated as appropriate. Appendix C contains the Agency's response to our draft report.

The Agency did not provide an acceptable corrective action for Recommendation 5. The Agency's proposed corrective action is to "provide additional instructions for how Regions should document information related to DWIG-TSA project proposals received and how the Region applies their project prioritization methodology." We agree that the corrective action, as provided, will address the intent of the recommendation for the DWIG-TSA program by documenting information used to prioritize projects received through the solicitation process and the IHS SDS Prioritization List. However, this corrective action does not address the CWISA projects considered for funding. According to the Agency response, "[r]egional CWISA offices consider: ranking on the Indian Health Service SDS Priority List, available budget, other project funding sources (such as IHS), and whether a project meets the eligibility requirements." As evident from the OW's response and the documents we reviewed, there are reasons to skip higher-ranked CWISA projects on the IHS SDS Project List and, consistent with record-keeping requirements, these reasons must be documented.

For Recommendation 6 related to Regions 3, 5, 6, and 8, the Office of Water stated that "[e]ach of these Regions uses the combination of their own project prioritization criteria, scoring from the Indian Health Service's SDS (which is discussed in our national DWIG-TSA guidelines as a viable and effective prioritization method), and other factors as their prioritization method." A document outlining the required regional quantifiable method is needed because the Agency considers multiple factors when making these decisions. For example, it is making decisions based on region-specific project

prioritization criteria, scores from the IHS SDS Project List, and “other factors.” It should be clear why one project was funded and another was not funded. Furthermore, without a quantifiable method of prioritization, tribes in the region are potentially excluded from the opportunity to review and comment on the developed method, as required by the OW’s guidance, prior to the method being finalized.

Status of Recommendations and Potential Monetary Benefits

Rec. No.	Page No.	Recommendation	Status*	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	21	Develop a process to ensure that Infrastructure Investment and Jobs Act tribal set-aside program funds are allocated to the regional offices in a timely manner.	R	Assistant Administrator for Water	6/30/26	\$211,652
2	21	Determine, based on input from the regional offices, whether the February 2024 supplemental <i>Clean Water Indian Set-Aside – Emerging Contaminants Program Guidance</i> adequately clarifies how regional offices are to identify and prioritize Clean Water Indian Set-Aside Infrastructure Investment and Jobs Act Emerging Contaminants funds for eligible projects and update the guidance if needed.	R	Assistant Administrator for Water	2/6/25 [†]	\$6,500
3	21	Determine, based on input from the regional offices, what additional guidance is needed to clarify how to identify and prioritize Drinking Water Infrastructure Grants—Tribal Set-Aside Infrastructure Investment and Jobs Act Emerging Contaminants funds for eligible projects. Develop and distribute additional guidance as appropriate.	R	Assistant Administrator for Water	2/24/25 [†]	—
4	22	Determine, based on input from the regional offices, what additional guidance is needed to clarify how to identify and prioritize Drinking Water Infrastructure Grants—Tribal Set-Aside Infrastructure Investment and Jobs Act Lead Service Line Replacement funds for eligible projects. Develop and distribute additional guidance as appropriate.	R	Assistant Administrator for Water	2/24/25 [†]	—
5	28	Provide guidance to the regional offices regarding pre-award recordkeeping requirements for documenting the rationale and data used to determine funding decisions related to the tribal set-aside programs for all Infrastructure Investment and Jobs Act awards.	U	Assistant Administrator for Water	—	—
6	28	Take adequate steps to ensure that Regions 3, 5, 6, and 8 expeditiously establish quantifiable methods for prioritizing projects to receive Drinking Water Infrastructure Grants—Tribal Set-Aside funds.	U	Assistant Administrator for Water	—	—

* C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

[†] Although the EPA indicated that the corrective action for this recommendation is completed, we list the recommendation status as resolved with corrective actions pending because we are waiting on documentation from the EPA to verify the completed corrective action.

Fiscal Years 2022 and 2023 Tribal Set-Aside Allocations and Awards

Table A-1: FY 2022 DWIG-TSA IIJA allocations to regional offices and awards to tribes

EPA Region	GS allocated (\$)	GS awarded (\$)	EC allocated (\$)	EC awarded (\$)	LSLR allocated (\$)	LSLR awarded (\$)
1	788,000	788,000	332,000	0	1,243,000	0
2	2,059,000	0	866,000	0	3,248,000	0
3	761,000	555,000	320,000	0	1,200,000	0
4	983,000	983,000	414,000	0	1,550,000	0
5	1,976,000	1,976,000	831,000	0	3,116,000	0
6	3,531,000	3,531,000	1,485,000	0	5,569,000	811,000
7	1,290,000	0	542,000	542,000	2,034,000	0
8	4,869,000	4,563,000	2,048,000	2,048,000	7,680,000	0
9	11,850,000	11,850,000	4,984,000	4,984,000	18,691,000	0
10	9,933,000	9,888,000	4,178,000	0	15,669,000	0
Totals	38,040,000	34,134,000	16,000,000	7,574,000	60,000,000	811,000

Notes: GS = General Supplemental, EC = Emerging Contaminants, LSLR = Lead Service Line Replacement.

Source: OIG summary of FY 2022 DWIG-TSA IIJA allocations and awards. (EPA OIG table)

Table A-2: FY 2023 DWIG-TSA IIJA allocations to regional offices and awards to tribes

EPA Region	GS allocated (\$)	GS awarded (\$)	EC allocated (\$)	EC awarded (\$)	LSLR allocated (\$)	LSLR awarded (\$)
1	160,000	0	121,000	0	66,000	0
2	532,000	0	168,000	0	1,071,000	0
3	115,000	0	12,000	0	9,000	0
4	577,000	577,000	387,000	0	2,176,000	0
5	2,037,000	0	1,676,000	0	2,303,000	0
6	5,723,000	5,723,000	1,470,000	0	5,186,000	0
7	1,197,000	0	185,000	0	542,000	0
8	8,480,000	0	1,964,000	0	9,871,000	0
9	12,446,000	11,324,811	6,286,000	3,029,400	26,568,000	0
10	12,773,000	0	3,731,000	0	12,208,000	0
Totals	44,040,000	17,624,811	16,000,000	3,029,400	60,000,000	0

Notes: GS = General Supplemental, EC = Emerging Contaminants, LSLR = Lead Service Line Replacement.

Source: OIG summary of FY 2023 DWIG-TSA IIJA allocations and awards. (EPA OIG table)

Table A-3: FYs 2022 and 2023 CWISA IIJA allocations to regional offices and awards to tribes

IHS areas	EPA regions	FY 2022 GS allocated (\$)	FY 2022 GS awarded (\$)	FY 2023 GS allocated (\$)	FY 2023 GS awarded (\$)
Alaska	10	12,846,000	0	10,309,000	0
Albuquerque	6 & 8	2,373,000	2,373,000	7,391,000	7,391,000
Bemidji	5	2,240,000	2,240,000	2,229,000	0
Billings	8	439,000	0	2,665,000	0
California	9	5,382,000	5,382,000	1,120,000	0
Great Plains	7 & 8	4,928,000	5,081,600	5,928,000	0
Nashville	1, 2, 4, & 6	110,000	0	151,000	0
Navajo	9	4,880,000	4,880,000	3,808,000	3,808,000
Oklahoma	6 & 7	1,651,000	1,651,000	2,630,000	2,630,000
Phoenix	8 & 9	1,355,000	1,355,000	4,175,000	4,175,000
Portland	10	1,576,000	0	3,526,000	0
Tucson	9	260,000	260,000	108,000	108,000
—	Totals	38,040,000	23,222,600	44,040,000	18,112,000

Note: GS = General Supplemental; FYs 2022 and 2023 CWISA IIJA Emerging Contaminants funds were not allocated to the EPA regions until FY 2024 and, as a result, are not included in IIJA totals.

Source: OIG summary of FYs 2022 and 2023 CWISA IIJA allocations and awards. (EPA OIG table)

Tribal Set-Aside Guidance Documents from the Office of Water

Table B-1: A list of the OW guidance documents related to the CWSRF, DWSRF, CWISA, and DWIG-TSA Programs IIJA Emerging Contaminants and Lead Service Line Replacement funds, as of November 2024

Document	Published	Programs	Description of guidance related to IIJA EC and LSLR funds
<i>Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law</i>	March 8, 2022	CWSRF and DWSRF	This memorandum provides the CWSRF definition of EC, a detailed list of DWSRF set-aside EC project and activity examples, and a detailed list of DWSRF set-aside LSLR project and activity examples.
<i>Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law</i>	May 27, 2022	CWISA and DWIG-TSA	This memorandum provides FY 2022 IIJA annual allocation amounts for the DWIG-TSA EC and LSLR funds but not CWISA EC funds. It also provides general guidance for awarding EC and LSLR funds.
<i>Guidance for Developing and Maintaining a Service Line Inventory</i>	August 2022	DWSRF	This guidance provides recommendations to public water systems in developing and maintaining a lead service line inventory.
<i>Allotments of Tribal Set-Asides of the Drinking Water and Clean Water State Revolving Funds; the Small, Underserved, and Disadvantaged Communities Tribal Grant Program; and the Emerging Contaminants in Small or Disadvantaged Communities Tribal Grant Program</i>	June 28, 2023	CWISA and DWIG-TSA	This memorandum provides FY 2023 IIJA amounts for DWIG-TSA EC and LSLR funds but not CWISA EC funds. Guidance in this memorandum related to EC funds is similar to guidance in the May 27, 2022 memorandum.
<i>Regional Allocation Formulas for Non-Competitive Tribal Drinking Water Infrastructure Grants: An Amendment to the Drinking Water Infrastructure Grants – Tribal Set-Aside Program Revised Guidelines</i>	June 28, 2023	DWIG-TSA	This memorandum establishes an allocation formula for the DWIG-TSA EC and LSLR funds.
<i>Clean Water Indian Set-Aside – Emerging Contaminants Program Guidance</i>	February 1, 2024	CWISA	This memorandum provides FYs 2022 and 2023 CWISA EC allocation amounts, funding eligibility criteria for regional offices, and project prioritization guidance.

Document	Published	Programs	Description of guidance related to IIJA EC and LSLR funds
<i>Implementing Lead Service Line Replacement Projects Funded by the Drinking Water State Revolving Fund</i>	May 1, 2024	DWSRF	This memorandum provides guidance for conducting LSLR projects funded by the IIJA through the DWSRF.
<i>Fiscal Year 2024 Allotments of Tribal Set-Asides of the Drinking Water and Clean Water State Revolving Funds; the Small, Underserved, and Disadvantaged Communities Tribal Grant Program; and the Emerging Contaminants in Small or Disadvantaged Communities Tribal Grant Program</i>	May 22, 2024	CWISA and DWIG-TSA	This memorandum provides FY 2024 IIJA amounts for CWISA EC funds and DWIG-TSA EC and LSLR funds. Guidance in this memorandum related to EC and LSLR funds is the same as guidance in the May 27, 2022 memorandum.

Notes: CWSRF = Clean Water State Revolving Fund, DWSRF = Drinking Water State Revolving Fund, EC = Emerging Contaminants, LSLR = Lead Service Line Replacement.

Source: OIG summary of IIJA tribal set-aside guidance documents published by OW. (EPA OIG table)

Agency Response to the Draft Report



OFFICE OF WATER

WASHINGTON, D.C. 20460

February 24, 2025

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Report: *Late Allocation and Ineffective Oversight by the Office of Water Delayed the Award of Infrastructure Investment and Jobs Act Funds to Tribes*, Project No. OA-FY23-0082, January 14, 2025

FROM: Benita Best-Wong, Deputy Assistant Administrator performing the non-exclusive duties and functions of the Assistant Administrator for Water

TO: Nicole N. Murley, Acting Inspector General
Office of Inspector General

**BENITA
BEST-WONG** Digitally signed by
BENITA BEST-WONG
Date: 2025.02.24
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Thank you for the opportunity to review and respond to the Office of Inspector General's draft report: *Late Allocation and Ineffective Oversight by the Office of Water Delayed the Award of Infrastructure Investment and Jobs Act Funds to Tribes*, Project No. OA-FY23-0082, dated January 14, 2025. The following is a summary of the U.S. Environmental Protection Agency's overall position, followed by its position on the draft report's recommendations.

AGENCY'S OVERALL POSITION

As described in the attached technical comments, the Office of Water identified several inaccuracies, assumptions, and misleading statements that form the basis for several of the main conclusions stated in the draft report. The title of the report is also misleading. OW agrees that some of the recommendations provided in the report would help to improve program implementation. As OW's Subject Matter Experts communicated to the OIG evaluation team during fieldwork and during the Statement of Findings exit conference, OW is implementing or has already implemented several of these recommendations. OW agrees with or partially agrees with Recommendations 1 and 5 and provides suggested corrective actions below. OW agrees with and has already completed corrective actions for Recommendation 2, 3, and 4. OW disagrees with Recommendation 6 and has provided details below.

As summarized below and within the attached technical comments, OW disagrees with many of the draft report's conclusions as well as the report title, which asserts that OW delayed allocations of funding and provided insufficient guidance to Regions that caused delays in awarding *Infrastructure Investment and Jobs Act* Clean Water Indian Set-Aside and Drinking Water Infrastructure Grant – Tribal Set-Aside funds. The draft report inaccurately concludes that two key factors contributed to when the funds were awarded: OW's timeline in releasing IIJA funding allotments to Regions as well as insufficient guidance provided to Regional offices on how to identify and prioritize projects. The draft report also inaccurately concludes that OW has provided insufficient guidance to Regions on pre-award decision-making documentation.

OW agrees with the OIG's main finding that the DWIG-TSA and CWISA IIJA FY22 funds for emerging contaminants and lead service line replacements have not been awarded within two years of Congressional appropriation. However, the OIG's claim that there is a significant causal link between the allocation of FY22 and FY23 IIJA funding and delayed awards is unsubstantiated and inaccurate. There are many factors that contribute to the EPA's ability to make awards of IIJA funding. For example, for the DWIG-TSA, one of the main challenges that OW has identified is a lack of eligible EC and LSLR drinking water projects that are ready to be funded. To address this challenge, OW and the Regions continue to work to improve outreach and communication efforts to increase awareness of the DWIG-TSA funding programs and to provide technical assistance to potential funding recipients for funding access support. Additionally, both OW and Regional offices have used contracts to stand up new technical assistance programs, through which the EPA provides direct support to Tribes and Tribal water utilities for identifying, planning, designing, and implementing water infrastructure projects. These technical assistance programs provided by the EPA will help to accelerate the obligation of IIJA funds.

Furthermore, OW disagrees with the OIG's characterization of the programmatic guidance provided to Regional offices by OW as "insufficient." OW has provided thorough instruction regarding project identification and prioritization in writing and through regular and frequent communications and meetings with Regional staff. For one program, OW finalized such direction during the course of OIG's work, and because of that timing the OIG report acknowledges that the OIG did not assess with Regional staff whether the instructions were "enough" to aid Regions in award decision-making; however, the report still directly and indirectly asserts that the instruction is insufficient, without the EPA Regions' substantiation, and that more direction is needed without specifying which aspects of the process, program, or guidance lack specificity.

AGENCY RESPONSE TO RECOMMENDATIONS

OIG Recommendation 1: Develop a process to ensure that Infrastructure Investment and Jobs Act tribal set-aside program funds are allocated to the Regional offices in a timely manner.

EPA Response to Recommendation 1 – Agree

OW concurs that there should be a process in place to allocate CWISA and DWIG-TSA program funds to the Regional offices. Regarding the CWISA program funds, OW concurs with the statement on p.17 that “The CWISA program guide is less explicit regarding when the OW will notify Regions of their annual CWISA allocation.” The EPA notes that the timeline for any Congressional appropriations to the agency, which, in turn, affects the timing of grant allocations, is outside of the EPA’s control. The CWISA program also recommends additional language to the OIG draft report to clarify the source and applicability of the 30-day timeframe for CWISA funds (see the Technical Comments Sheet document attached).

Proposed Corrective Actions

1. Regarding the CWISA program funds, as a corrective action, the office will consider the feasibility of including a more specific timeline in future program communications. Completion date is dependent upon Congressional appropriations. For the DWIG-TSA program, where program guidelines state that allocation of funds will happen within 30 days of appropriations, OW will review the process for allocating DWIG-TSA funds and will consider the feasibility of the current timeline. OW will revise the timeline for the allocation process, as appropriate. with expected completion by June 30, 2026.

OIG Recommendation 2: Determine, based on input from the Regional offices, whether the February 2024 supplemental Clean Water Indian Set-Aside— Emerging Contaminants Program Guidance adequately clarifies how Regional offices are to identify and prioritize Clean Water Indian Set-Aside Infrastructure Investment and Jobs Act Emerging Contaminants funds for eligible projects and update the guidance if needed.

EPA Response to Recommendation 2 – Agree (Completed)

OW agrees with, and has already completed, Recommendation 2. Per the office’s standard practice, the Office of Wastewater Management continuously communicates with the Regions, and evaluates and responds to the EPA Regions’ needs to optimally administer Tribal funding programs, including the CWISA IJJA Emerging Contaminants funding administration. For example, OWM conducts monthly conference calls with all Regions to discuss CWISA funds. This OIG Recommendation thus aligns with OWM existing standard practices.

Since the CWISA IJJA Emerging Contaminants funds became available in FY2022 and represented a technical restriction on a portion of CWISA appropriations, OWM regularly engaged Regions during monthly calls with HQ and all Regions, ad-hoc calls with HQ and individual Regions, national in-person meetings, and other forums to discuss issues that the Regions believed were pertinent in implementing this IJJA appropriation. Written instructions to guide the Regions were developed during CY2022-2023 and released to the Regions initially in February 2024. The release of the February 2024 materials is acknowledged in the OIG’s draft report. OWM continued to regularly meet via conference call and in other forums to seek the Regions’ input on

those documents and whether they expressed in a written format how Regions identify and prioritize eligible projects, as well as whether the information aided the Regions in administering the funds generally. The Regions' stated needs indicated that the February 2024 documents did not require updating, but that additional instructions could further aid the Regions in identifying eligible projects. In response, OWM released a supplemental resource, a CWISA IIJA Emerging Contaminants Funding Eligibility Tool, dated January 23, 2025, which was provided to the EPA Regions on February 6, 2025. Prior to finalizing the resource, all EPA Regions were invited to provide feedback on the draft resource to ensure it meaningfully aided their administration of the CWISA IIJA Emerging Contaminants funds. **For this reason, OW considers Recommendation 2 fully completed by February 6, 2025.** OWM will continue to regularly engage the EPA Regions to assess and respond to their requests for additional or revised information to effectively implement funding programs, including CWISA IIJA Emerging Contaminants.

OIG Recommendation 3: Determine, based on input from the Regional offices, what additional guidance is needed to clarify how to identify and prioritize Drinking Water Infrastructure Grants—Tribal Set-Aside Infrastructure Investment and Jobs Act Emerging Contaminants funds for eligible projects. Develop and distribute additional guidance as appropriate.

EPA Response to Recommendation 3 – Agree (Completed)

As explained in the attached technical comments, OW already meets with Regional Tribal water infrastructure funding programs regularly in several different forums, and as needed, to discuss implementation of the CWISA, DWIG-TSA, and other Tribal water infrastructure programs. Therefore, OW has completed this recommendation and has determined that there is not a need for additional national-level guidance on how to identify and prioritize projects for DWIG-TSA IIJA funding. OW will continue to solicit input from Regions on the need for additional instruction, information, and resources from OW related to implementing the funding program, including the implementation of the lead service line replacement and emerging contaminants IIJA appropriations. OW will also continue to take appropriate action to respond to the Region-specific and collective needs identified by Regional programs.

As previously stated, for the DWIG-TSA, one of the main challenges for awarding funding is a lack of eligible EC drinking water projects that are ready to be funded. To address this challenge, OW and the Regions continue to work to improve outreach and communication efforts to increase awareness of the DWIG-TSA Emerging Contaminants funding programs and to provide technical assistance to potential funding recipients. OW and Regional offices have stood up new technical assistance programs, through which the EPA provides direct support to Tribes and Tribal water utilities for identifying, planning, designing, and implementing water infrastructure projects related to PFAS and emerging contaminants. These technical assistance programs provided by the EPA will help to accelerate the obligation of IIJA Emerging Contaminants funds.

OIG Recommendation 4: Determine, based on input from the Regional offices, what additional guidance is needed to clarify how to identify and prioritize Drinking Water Infrastructure

Grants—Tribal Set-Aside Infrastructure Investment and Jobs Act Lead Service Line Replacement (LSLR) funds for eligible projects. Develop and distribute additional guidance as appropriate.

EPA Response to Recommendation 4 – Agree (Completed)

OW agrees with and has completed this recommendation. As we have explained above, OW communicates frequently with Regional programs to identify and respond to needs for additional instruction and information related to DWIG-TSA LSLR funding program implementation.

As previously stated, for the DWIG-TSA, one of the main challenges for awarding funding is a lack of eligible LSLR drinking water projects that are ready to be funded. To address this challenge, OW and the Regions continue to work to improve outreach and communication efforts to increase awareness of the DWIG-TSA LSLR funding programs and to provide technical assistance to potential funding recipients. OW and Regional offices have stood up new technical assistance programs, through which the EPA provides direct support to Tribes and Tribal water utilities for conducting lead service line inventories as well as identifying, planning, designing, and implementing lead service line replacements and other projects that can be funded under the DWIG-TSA LSLR program. These technical assistance programs provided by the EPA will help to accelerate the obligation of IJA LSLR funds.

OIG Recommendation 5: Provide guidance to the Regional offices regarding preaward recordkeeping requirements for documenting the rationale and data used to determine funding decisions related to the tribal set-aside programs for all Infrastructure Investment and Jobs Act awards.

EPA Response to Recommendation 5 – Partially Agree

Project officers and grants management staff in Regions currently document funding decisions for individual DWIG-TSA and CWISA awards according to applicable grants and interagency agreement policies and procedures. For grants, pre-award funding decision information and rationale is documented in the funding recommendation, which is required for all new awards and supplemental amendments. For IAs, the justification for an IA must be documented in a decision memo.

With respect to the CWISA program, the draft report is currently not clear in explaining that the Sanitation Deficiency System (SDS) provides the rationale, data, and method of prioritizing CWISA projects (as per CWISA Guidance [directed to EPA Regions] Sections IV and V). When determining what projects to fund, Regional CWISA offices consider: ranking on the Indian Health Service SDS Priority List, available budget, other project funding sources (such as IHS), and whether a project meets the eligibility requirements. OWM has a method of recordkeeping: the SDS Prioritization Lists, which are described in Section V, Subpart B & C (p. 11-12) of the CWISA Program Guidance, which use the Indian Health Service's "*SDS Final Guidelines September 2019*" (<https://www.ihs.gov/dsfc/resources/>).

As stated in the DWIG-TSA Program Guidelines, Regions are responsible for developing their Region's DWIG-TSA program guidelines, which include the rationale used to determine funding decisions for DWIG-TSA program awards. Indian Health Service's SDS is an acceptable method for prioritizing projects under the DWIG-TSA funding program.

Though OW does not agree that additional guidance from OW is needed to support Regions with documenting the rationale for individual funding decisions, for the DWIG-TSA funding programs that do not exclusively use SDS to identify projects, OW agrees that it would be helpful to provide Regions with additional information on documenting all project proposals received and how the Regions applied their project prioritization schemes in their review of proposals for eligible projects.

Proposed Corrective Actions

1. OW will provide additional instructions for how Regions should document information related to DWIG-TSA project proposals received and how the Region applies their project prioritization methodology. Expected completion by June 30, 2026.

OIG Recommendation 6: Take adequate steps to ensure Regions 3, 5, 6, and 8 expeditiously establish quantifiable methods for prioritizing projects to receive Drinking Water Infrastructure Grants—Tribal Set-Aside funds.

EPA Response to Recommendation 6 – Disagree

OW disagrees with this recommendation because all of these Regions already use established methods to prioritize projects to receive DWIG-TSA funding. Each of these Regions uses the combination of their own project prioritization criteria, scoring from the Indian Health Service's SDS (which is discussed in our national DWIG-TSA guidelines as a viable and effective prioritization method), and other factors as their prioritization method. As noted in the OIG draft report, it is currently a DWIG-TSA program requirement that Regions document their quantifiable methods and standards to identify and prioritize eligible DWIG-TSA projects. OW considers this recommendation resolved, and that no corrective action is needed as the Regions specified currently have acceptable prioritization methods.

CONTACT INFORMATION

If you have any questions regarding this response or the technical comments, please have your staff contact OW's Audit Follow-Up Coordinator Carla Hagerman, at Hagerman.Carla@epa.gov.

ATTACHMENT

1. Technical Comments on OIG Draft Report: Late Allocation and Ineffective Oversight by the Office of Water Delayed the Award of Infrastructure Investment and Jobs Act Funds to Tribes, OA-FY23-0082

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