

CALIFORNIA WATER AND WASTEWATER ARREARAGE PAYMENT PROGRAM GUIDELINES: WATER ARREARAGES

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INTRODUCTION

The purpose of this document is to establish the process and criteria for the allocation and administration of the funds appropriated to the State Water Resources Control Board (State Water Board) in the Fiscal Year 2021-22 Budget for the California Water and Wastewater Arrearage Payment Program: Water Arrearages (Program). The criteria include requirements associated with establishing payment plans for customers, and prohibitions on discontinuation of service for water systems participating in the Program. The funding source for the Program is the American Rescue Plan Act (ARPA) of 2021. Any federal requirements associated with the funding source may be requirements of the Program. The State Water Board will notify water systems' administrative contacts via email if any requirements change during Program implementation and correspondingly post changes to its website.

The Deputy Director of the Division of Financial Assistance (DFA) and the Deputy Director of the Division of Drinking Water (DDW) may make clarifying, non-substantive amendments to these Guidelines. Future changes to these Guidelines may be necessary due to changes in law or in State Water Board policy. If substantive changes are necessary, amendments to the Guidelines will be considered by the State Water Board.

DEFINITIONS

Arrearage – amount of money owed to a water system from nonpayment of residential and commercial accounts that accrued from completed billing periods during the COVID-19 pandemic bill relief period. Arrearage does not include late fees and interest on outstanding balances.

Community water system – a system described and regulated under the Safe Drinking Water Act (commencing with section 116270 of the Health and Safety Code): a public water system that serves at least 15 service connections used by permanent residents or regularly serves at least 25 permanent residents of the area served by the system. (Health & Saf. Code, § 116275, subd. (i).)

Commercial customer – a water system customer or connection that serves a commercial/institutional customers e.g., hotels, motels, restaurants, office buildings, government and military facilities, gas stations, hospitals, educational institutions, retail establishments, dormitories, nursing homes, churches, jails, prisons, mental health facilities, addiction recovery centers, farmworker housing, and campgrounds. Commercial customer does not include industrial (manufacturing, chemical, refineries, cooling towers, animal & food processing, etc.); agriculture irrigation (crops, aquaculture, etc.); or landscape irrigation (parks, golf courses, etc.).

COVID-19 pandemic bill relief period – the period from March 4, 2020, to June 15, 2021, inclusive, and includes any customer billing period that includes these dates.

Customer notification – a written notification to residential and commercial water system customers or connections of the amount of debt/arrearage bill credit provided by the Program. Notification must acknowledge the source of funds from the State. Notification language will be provided at a later date.

Default – either of the following:

- A customer's failure to comply with an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges for 60 days or more;
- A customer's failure to pay current residential service charges for 60 days or more from its due date, regardless of whether the customer is subject to an amortization agreement, an alternative payment schedule, or a deferral or reduction in payment plan for delinquent charges.

Disadvantaged Community (DAC) – a community with an annual median household income that is less than 80 percent of the statewide annual median household income. ([Wat. Code, § 79505.5.](#))

Large community water system – a community water system that serves more than 3,300 connections or a yearlong population of more than 10,000 persons.

Past-due bills – customer water bills that are 60 days or more past due and includes both active and inactive accounts and accounts that have payment plans or payment arrangements.

Payment plan – a plan for deferred or reduced payment including, but not limited to minimum payments, alternate payment schedules, or amortization of unpaid balances. The payment plan should allow 12 or more months for repayment of outstanding balances.

Residential customer – water service customers, including groundwater well owners charged for water in managed basins, residing in single-family residences, multifamily residences, mobile homes, including, but not limited to, mobile homes in mobile home parks, or farmworker housing that receive a bill for water service.

Small community water system – a community water system as defined above that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons. (Health and Saf. Code, § 116275, subd. (z).)

State – the State of California.

Wastewater treatment provider – city, county, special district, or joint powers authority that provides wastewater collection, treatment or disposal services through a publicly owned treatment works. (Health & Saf. Code, § 116773.2 subd. (g).)

Water enterprise revenue shortfall – water service revenue decrease accrued as a difference between a water system's 2019 fiscal or calendar year and its 2020 fiscal or calendar year as a result of the COVID-19 pandemic.

Water shutoff – discontinuation of water service for nonpayment.

SECTION A: ELIGIBILITY

The following are eligible for funding:

- Community water systems that accrued residential and commercial customer arrearages during the COVID-19 pandemic bill relief period are eligible for the Program. This includes community water systems that transferred arrearage debt to a third-party such as a county under a Teeter Plan or a debt collection entity.
- Community water systems that collect eligible customer revenue through property tax rolls are also eligible if they are able to identify drinking water arrearages and can directly credit customers' accounts.
- Community water systems that accrued residential and commercial customer arrearages during the COVID-19 pandemic bill relief period and used a customer assistance program for that arrearage.

SECTION B: PROGRAM REQUIREMENTS

Water systems that participate in the Program must:

- Waive customer late fees for any arrearages accrued during the COVID-19 pandemic bill relief period in their entirety;
- Allocate payments as bill credits to customer accounts within 60 days of receiving payment;
- Notify customers of the amount credited, and if splitting the credit between tax years, when the second credit will be applied;
- Offer to enroll customers with remaining debt into a payment plan by direct notification to each customer;
- Allow customers 30 days to enroll in a payment plan;
- Not discontinue water service until the customer defaults on the payment plan or misses the deadline to enroll in the payment plan;
- Not discontinue water service prior to the date established in 116733.4 (e)(2)(A);
- Comply with all terms and conditions of payment; and
- Report on expenditures and customer credits.

More detail on Program requirements is provided below.

Participating water systems that do not comply with Program requirements may be subject to enforcement actions by the Division of Drinking Water and may be required to return moneys to the State Water Board.

B.1 REQUIREMENT FOR ALL COMMUNITY WATER SYSTEMS – REGARDLESS OF PARTICIPATION IN THE PROGRAM

All community water systems, regardless of size or participation in the Program, must offer payment plans to customers with arrearages, pursuant to AB 148. The payment plans and their associated rules must be consistent with the Water Shutoff Protection Act established under Health and Safety Code section 116900 et seq. (Health and Safety Code, § 116773.4, subd. (e).) Associated rules include, but are not limited to, rules and practices relating to the timing and manner of notice and discontinuation of service for payment plan defaults. Community water systems that violate provisions of the Water Shutoff Protection Act may be subject to enforcement action by DDW or the Attorney General.

SECTION C: PROPORTIONAL ALLOCATION OF FUNDS TO COMMUNITY WATER SYSTEMS

C.1 PURPOSE AND OVERVIEW

Section C of the Guidelines describes the process the State Water Board will use to establish the total statewide need and the allocation methodology. One-time payments will be made to water systems based on the allocation methodology established in this section. Community water systems receiving payments will credit customer bills in accordance with the methodology established in Section E after receiving payment from the State Water Board.

C.2 TOTAL STATEWIDE WATER NEED

The State Water Board surveyed all community water systems from August 11, 2021 through September 10, 2021 to determine accrued residential and commercial arrearages, as well as revenue loss, during the COVID-19 pandemic bill relief period (March 4, 2020 through June 15, 2021). Approximately 87% of community water systems that charge for water submitted the survey. For systems that were not able to disaggregate the arrearages for drinking water from other non-water charges on their bill, State Water Board staff used data from systems that reported all debt information to estimate drinking water arrearages for those systems.

For the 13% of community water systems that charge for water and did not respond to the survey, the State Water Board staff estimated their residential and commercial arrearages based on the average reported arrearages of systems of similar size proportionally by the proportion of reported accounts in arrears. These estimates were added to the total statewide need numbers.

Table 1 shows the data and calculations used to establish the total statewide need.

Table 1: Drinking Water Arrearage Survey Data Analysis

	Reported	Estimated	Total
Community Water Systems (2,844)	2,293 (80.6%)	n/a	
Community Water Systems that Charge for Water	1,845 (86.7%)	283 (13.3%)	2,128
Total Arrearages	\$315,400,661	\$8,324,272	\$323,724,934
Residential	\$276,583,036	n/a	
Commercial	\$42,817,626	n/a	
Total Late Fees	\$16,009,161	\$578,291	\$16,587,992
Residential	\$13,008,330	n/a	
Commercial	\$3,001,371	n/a	
3% Administrative Costs*	\$8,031,399	\$267,077	\$8,298,416
TOTAL Estimated Maximum Program Need**:	\$339,441,221	\$9,169,640	\$348,611,342
*Not to exceed \$1 million.			
**This total includes the addition of late fees as they were reported in the survey, but does not mean they will be an eligible amount.			

C.3 METHODOLOGY TO ESTABLISH ALLOCATION

Because the funding amount is sufficient to cover the full statewide need plus requested administrative costs, the State Water Board will provide water systems with 100 percent of their requested amounts (arrears plus administrative costs). Water systems may update the arrearage amounts they reported in the survey as part of the application.

SECTION D: APPLICATION REQUIREMENTS

State Water Board staff sent multiple emails to water systems requesting initial documents (i.e., Payee Data Record (STD. 204)) that systems are required to provide in order to process applications and receive state funds. Technical assistance was provided to water systems that requested help in completing the documents. Systems that have not completed the initial documents **MUST** submit them as part of their application.

State Water Board staff will provide an application package to all eligible community water systems and begin accepting complete applications within 14 days of State Water Board adoption of these Guidelines. The applications will be accepted through the EAR or another online portal. Technical assistance will be available through the Division of Drinking Water staff, and outside providers to assist community water systems that need help completing the application.

The application will consist of the following forms:

- Application/disbursement form - identifying the maximum amount of funding the water system may apply for. The application form must be signed by the community water system's authorized representative or designee.
- Conditions of payment form – details the program requirements with which the authorized representative, on behalf of the system, agrees to comply.

There will be an initial 60-day application period. State Water Board staff will attempt to contact any community water system that does not apply during the initial application period and provide technical assistance with the application. State Water Board staff will also contact community water systems with incomplete applications to assist them.

D.1 SMALL COMMUNITY WATER SYSTEMS

The State Water Board will provide small community water systems with an application that identifies the amount of funding the system is eligible to receive based on the reported or estimated arrearages. Small community water systems may update their reported arrearages as part of the application. Small community water systems must upload the application, signed by the authorized representative or designee for the system, to the application portal or mail the forms to the State Water Board prior to December 6, 2021. The authorized representative, or its designee, must attest that the application is true and accurate based on the community water system's documentation or the methodology used by the State Water Board if the community water system lacks documentation on customer arrearages or revenue shortfalls.

D.2 LARGE COMMUNITY WATER SYSTEMS

D.2.1 Application Process

State Water Board staff will notify large community water systems of the amount of funding the system is eligible to receive based on their reported arrearages. Large water systems may update their reported arrearages as part of the application. Large water systems must provide documentation from accounting or billing systems verifying the reported arrearages as part of the application. Applications must be submitted no later than December 6, 2021. The authorized representative, or its designee, must attest to the accuracy of the application material and the reported arrearages.

D.2.2 Application Review Process

State Water Board staff will verify that the reported arrearages are supported by the community water systems' documentation. Staff may request additional information if the arrearages submitted with the application differ from those reported in the survey, or documentation is inadequate to support the amount. Technical assistance may be available for systems serving disadvantaged communities that lack supporting documentation of arrearages.

D.3 COMMUNITY WATER SYSTEMS WITH COMBINED BILLING SYSTEMS

For systems that combine water with other utilities including but not limited to wastewater, stormwater, refuse, and/or energy, only the water-related portion of the arrearage is eligible for total or partial reimbursement. Community water systems with combined billing may not shut off water due to non-payment of the portion of the bill for other services that accrued during the COVID-19 pandemic relief bill period. This prohibition does not apply to debt accrued before or after the COVID-19 pandemic relief bill period.

For systems that cannot determine the proportion of the arrearage related to water service for each customer account, the water system will use an average customer approach to estimate the proportion of a system's arrearage that is attributable to the water portion of the bill for its residential and commercial customer classes. For each customer class, the water system will first calculate the average annual bill. Next the water system will calculate the average annual water portion of the average annual customer bill. Then the average annual water portion will be determined using the following formula:

Average Annual Percentage of Water Charge =

(Average Annual Water Charges / Total Average Annual Bill) x 100

The average annual percentage of water charge will be the percentage that is applied to the water system's customer arrearages.

The Deputy Director of DDW is authorized to resolve any disputes regarding the estimation methodology.

D.4 LATE APPLICATIONS

The State Water Board will allow water systems that did not respond to the initial survey to complete an abbreviated survey and apply for funds. The State Water Board will also hold funds allocated to water systems that do not complete the application by December 6, 2021 until January 15, 2022. The State Water Board will contact water systems that are late with applications to assist the systems in applying. Third-party technical assistance providers will also be utilized to assist systems. State Water Board staff will post lists of systems that have not applied during the initial 60-day application period on the Program website. Community water systems that submit late surveys and applications are not guaranteed funding.

SECTION E: DISBURSEMENT PROCESS AND PRIORITY

State Water Board staff will process disbursements as soon as complete applications are received and reviewed. Staff will prioritize the timing of disbursements to small community water systems. State Water Board staff may also prioritize the timing of disbursements to community water systems serving disadvantaged communities. Staff

will begin disbursing funds by November 1, 2021. In order to expedite payments, checks may be sent to either the water system's physical address or the address of the Authorized Representative, if that address is on file with DFA.

Staff will contact systems with incomplete or missing applications to assist systems and expedite payments.

SECTION F: WATER SYSTEM ALLOCATION TO CUSTOMERS

F.1 ALLOCATION

Community water systems may expend up to three percent (3%), or up to \$1 million, whichever is less, for costs the system incurs in applying for assistance or complying with Program requirements. Because there are sufficient funds to cover the statewide arrearage total plus the administrative costs, system may request enough funds to cover both. System costs to apply for funds and comply with Program requirements must be documented and reported to the State Water Board. The State Water Board will provide a template for reporting administrative costs.

F1.1 Debt Transferred to Third Parties

Community water systems that have transferred their arrearages that qualify for the Program to a third party are eligible and may still apply to receive funding. Community water systems that no longer hold the arrearage debt may credit qualifying customer accounts by doing any of the following: (1) directly paying the third party to reduce or eliminate the debt; (2) refunding the credited amount to the customer; or (3) creating a positive balance for customers to apply toward future water bills. Community water systems must notify their customers of this credit and must indicate that the relief afforded by this credit should be used to pay down the debt that was transferred to the third party.

F.1.2 Water Systems that Utilized Customer Assistance Funds

Community water systems that utilized an existing customer assistance program to aid customers with qualifying arrearages may be eligible for the Program and receive payment for those arrearages previously covered by their customer assistance program. Eligibility will be determined after consultation with the State Water Board to determine that all program requirements can be met.

F.1.3 Late Fees

Water systems must waive late fees for customers with arrearages. Late fees cannot be included in the calculation of the system's total arrearages, or deducted from the amount to credit to customers' bills.

F.2 CUSTOMER CREDIT AND NOTIFICATION

F.2.1 Notification of Customer Bill Credits

Water systems must allocate the funds as bill credits to customers within 60 days of receiving funds. Water systems may apply the credits in two installments within different tax years provided they notify the customer when the second credit will be applied and meet the requirement to remit any moneys not credited to customers within six months of receipt back to the State Water Board. Water systems must notify customers in writing of the amount credited. The acknowledgement must state that the credited amount is being provided through the California Water and Wastewater Arrearage Payment Program through funding from the State Water Resources Control Board using federal ARPA funds.

F.2.2 Payment Plans

Water systems must offer to enroll any residential and commercial customers with remaining balances after the credits have been applied in a payment plan. The notice offering the payment plan must provide the customer with 30 days to enroll in the plan from the date of the notice. All other provisions of Health and Safety Code section 116900 related to payment plans apply to any plans established under this Program, regardless of the size of the community water system.

- Policies and related notices must be in English and any other language spoken by 10% or more of the community water system's customers
- A formal mechanism for a customer to contest or appeal a bill must exist and must be shared with customers.
- The community water system must provide a telephone number to allow a customer to contact a system representative to discuss options for averting water shutoff for nonpayment.

Water systems must also include a referral statement in the payment plan notice that additional assistance may be available through the Low Income Household Water Assistance Program administered by the Department of Community Services and Development (CSD) and other low-income assistance programs, including a contact number for appropriate Local Service Provider(s) or other program hotline to help with enrollment in those programs.

The State Water Board recommends that water systems enter into agreements with CSD and other appropriate agencies and local service providers to share appropriate information to identify and target assistance to customers at risk of being shutoff so that eligible customers receive benefits through those and other assistance programs. The State Water Board further recommends that water systems that offer local customer assistance programs consider entering into data sharing agreements with IOUs participating in the California Alternate Rates for Energy (CARE) program to support ongoing enrollment.

F.2.3 Shut Off Prohibition

A community water system receiving funds from this Program due to non-payment of bills may not discontinue water service before the later of the following dates: (1) the date identified in Health and Safety Code section 116773.4 (i.e., September 30, 2021 or a later date if amended); or (2) for a customer that has been offered a payment plan, the date the customer misses the enrollment deadline for, or defaults on, the payment plan. A community water system may not discontinue water service to a customer that remains current on a payment plan. Community water systems, regardless of size, must comply with Health and Safety Code section 116908 *et seq.* regarding discontinuation of service.

F.2.4 Consumer Debt Reporting and Third-Party Collection

The community water system must agree to not furnish information regarding arrearages for which credits have been provided to customers under this Program to any consumer reporting agency, as that term is defined at 15 U.S.C. section 1681a, subdivision (f). The system must also agree not to assign to a third party any arrearage for which a credit has been provided to a customer under this Program for purposes of collection.

If a water system has furnished information regarding arrearages for which credits have been provided to customers under this Program to a consumer reporting agency, as that term is defined at 15 U.S.C. section 1681a, subdivision (f), the water system agrees to, within thirty days of receiving payment:

Instruct each such consumer reporting agency to delete all information regarding the arrearages for which credits have been provided to customers under this Program; and

Cease further furnishing of information regarding the arrearages for which credits have been provided to customers under this Program to any consumer reporting agency.

If a water system has assigned arrearages for which credits have been provided to customers under this Program for purposes of collection to a third party that is not a tax agency, the water system agrees to recall the debt. If the third party at any time furnished information regarding the debt to one or more consumer reporting agencies, as that term is defined at 15 U.S.C. section 1681a, subdivision (f), the water system agrees to, within thirty days of receiving payment, require the third party to:

Instruct each such consumer reporting agency to delete all information regarding the debt; and

Cease further furnishing of information regarding the debt to any consumer reporting agency.

F.2.5 Tax Information

Water systems should consult with tax professionals regarding potential tax liability and reporting requirements. The State Water Board is not authorized to provide federal or state tax advice to water systems.

The State Water Board has been directed to issue a 1099-G to each community water system that receives funding. A water system's tax liability will depend on various factors, which may include the water system's entity status, if the water system has an offsetting loss, any other relevant factors specific to each water system, and current federal and state tax laws. Water systems should consult their own tax professional for questions about potential tax liability.

Some water systems may be subject to tax reporting requirements, including the issuance of a 1099-C or other tax form to customers who receive debt relief. Water systems must include in the notification to customers of the bill credits a statement that the bill credits may be taxable and that customers should consult with their own tax advisors regarding taxability. Water systems should also repeat this statement in a notice to credited customers in January of the next calendar year after the bill credits were allocated (i.e., the year that taxes on the allocations may be due). Water systems should consult their own tax professional for questions about tax reporting requirements. If the State Water Board receives clarifying information regarding tax information for this Program from the Internal Revenue Service, a notice will be posted on the website and an email will be sent to all participating community water systems.

F.3 RETURN OF FUNDS NOT CREDITED TO CUSTOMERS

Water systems must remit any funds not credited to customers, or used by the water system to apply for funds and comply with Program requirements, back to the State Water Board within six months of receiving payment.

SECTION G: REPORTING REQUIREMENTS

All community water systems that receive funds must provide certification to the State Water Board that, except for authorized administrative costs, Program funds were applied as credits to customer bills to offset COVID-19 arrearages. Systems must report the total amount credited, the number of accounts credited, the number of customers enrolled in a payment plan and the number of customers that did not enroll in a payment plan. Systems must also report the amount used for administration of the Program. The State Water Board will provide a template or online portal for reporting, including a template for reporting administrative costs. The State Water Board may request the supporting documentation to validate the reported amounts. Water systems accepting funds may be audited and must retain documentation supporting the reported amounts for seven years following final reporting.

SECTION H: WASTEWATER ARREARAGE PROGRAM

Because the appropriated amount exceeds the Statewide Need for water system arrearages and the total amount requested by water systems, the State Water Board will initiate a program for funding wastewater treatment provider arrearages and revenue shortfalls. The State Water Board will establish the wastewater arrearage program no later than February 1, 2022.