

FY 2016 Distribution of Drinking Water SRF Appropriation

**2016 DWSRF Allotment based on 2011 DWINSA Results
Based on Appropriation of \$855,381,000**

State	Capitalization Grant		State	Capitalization Grant	
	State Grant	% of Funds Available to States		State Grant	% of Funds Available to States
Alabama	\$15,876,000	1.91%	Nevada	\$11,854,000	1.43%
Alaska	\$8,312,000	1.00%	New Hampshire	\$8,312,000	1.00%
Arizona	\$15,008,000	1.81%	New Jersey	\$15,815,000	1.90%
Arkansas	\$12,719,000	1.53%	New Mexico	\$8,312,000	1.00%
California	\$78,215,000	9.41%	New York	\$39,900,000	4.80%
Colorado	\$14,468,000	1.74%	North Carolina	\$19,449,000	2.34%
Connecticut	\$8,423,000	1.01%	North Dakota	\$8,312,000	1.00%
Delaware	\$8,312,000	1.00%	Ohio	\$23,107,000	2.78%
Florida	\$30,403,000	3.66%	Oklahoma	\$13,393,000	1.61%
Georgia	\$18,123,000	2.18%	Oregon	\$11,806,000	1.42%
Hawaii	\$8,312,000	1.00%	Pennsylvania	\$26,578,000	3.20%
Idaho	\$8,312,000	1.00%	Puerto Rico	\$8,312,000	1.00%
Illinois	\$34,690,000	4.17%	Rhode Island	\$8,312,000	1.00%
Indiana	\$13,484,000	1.62%	South Carolina	\$8,312,000	1.00%
Iowa	\$12,432,000	1.50%	South Dakota	\$8,312,000	1.00%
Kansas	\$9,473,000	1.14%	Tennessee	\$8,312,000	1.00%
Kentucky	\$12,941,000	1.56%	Texas	\$60,104,000	7.23%
Louisiana	\$11,396,000	1.37%	Utah	\$8,674,000	1.04%
Maine	\$8,312,000	1.00%	Vermont	\$8,312,000	1.00%
Maryland	\$14,108,000	1.70%	Virginia	\$13,771,000	1.66%
Massachusetts	\$15,451,000	1.86%	Washington	\$18,553,000	2.23%
Michigan	\$25,873,000	3.11%	West Virginia	\$8,312,000	1.00%
Minnesota	\$14,875,000	1.79%	Wisconsin	\$14,496,000	1.74%
Mississippi	\$8,607,000	1.04%	Wyoming	\$8,312,000	1.00%
Missouri	\$16,781,000	2.02%			
Montana	\$8,312,000	1.00%	District of Columbia	\$8,312,000	1.00%
Nebraska	\$8,312,000	1.00%	Other Areas *	\$12,469,000	1.50%
Total Funds Available to States			\$	831,243,000	
National EPA Administrative Set Asides Prior to SDWA Set Asides				\$0	
<u>National Set-Asides</u>					
American Indian & Alaska Native Water Systems **				\$20,000,000	
Monitoring for Unregulated Contaminants				\$2,000,000	
National American Iron & Steel Administrative Set Aside				\$2,138,000	
Total SRF Appropriation			\$	855,381,000	

* Other Areas include: the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. This percentage was changed in FY 2010 appropriations language from 0.33% to 1.5% of the amount available to States. This language carries forward in subsequent appropriations.

** The percentage for the national set-aside for American Indian and Alaska Native Water Systems was changed from 1.5% to 2.0% of the amount appropriated in FY 2010 appropriations language. This language carries forward in subsequent appropriations.



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Part II

Environmental Protection Agency

40 CFR Parts 9 and 35
Drinking Water State Revolving Funds;
Interim Final Rule

- Q. Cash Draw Rules (40 CFR 35.3560 and 35.3565)
 - R. Audit Requirements (40 CFR 35.3570(b))
 - S. Application of Federal Cross-Cutting Authorities (Cross-cutters) (40 CFR 35.3575)
 - T. Minority and Women's Business Enterprise (MBE/WBE) Procurement Requirements (40 CFR 35.3575(d))
 - U. Environmental Review Requirements (40 CFR 35.3580)
- VIII. Administrative Requirements
- A. Executive Order 12866: Regulatory Planning and Reviews
 - B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
 - C. Paperwork Reduction Act
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 - G. Executive Order 13132: Federalism
 - H. Executive Order 13045: Children's Health
 - I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
 - J. Executive Order 12898: Environmental Justice

I. Statutory Authority

This interim final rule implements section 1452 of the SDWA (42 U.S.C. 300j-12) which establishes a national DWSRF program to assist public water systems in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the Act. Section 1452(g)(3) of the SDWA states that "the Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section."

II. Purpose

This interim final rule codifies and implements requirements for the national DWSRF program under section 1452 of the SDWA. This interim final rule supplements EPA's general grant regulations at 40 CFR part 31 which contain administrative requirements that apply to governmental recipients of EPA grants and subgrants. With the exception of requirements for the participation of minority and women's business enterprises (MBE/WBEs), EPA's general grant regulations at 40 CFR part 31 do not apply to recipients of loans and other types of assistance from a State DWSRF program Fund. The requirements for the participation of MBE/WBEs apply to assistance recipients under EPA's fiscal year 1993 Appropriations Act (Pub. L. 102-389). In developing this interim final rule, EPA has attempted to identify all the major program requirements. To that

end, this rule includes items required by the SDWA and those additional program requirements that EPA considers necessary for effective program management.

This interim final rule applies to States (i.e., each of the 50 States and the Commonwealth of Puerto Rico) which receive capitalization grants and are authorized to establish a Fund under section 1452 of the SDWA. While eligible public water systems and other assistance recipients are not regulated by this interim final rule, they may be indirectly affected because it includes requirements that they must meet in order to receive funding from the State for purposes authorized under section 1452 of the SDWA. This interim final rule does not apply to Indian Tribes and Alaska Native Villages, the District of Columbia, and other jurisdictions (i.e., Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam) that receive grants under section 1452 because they are not authorized to establish a Fund. Grants under section 1452 to Indian Tribes and Alaska Native Villages, the District of Columbia, and other jurisdictions are administered by the EPA Regional Offices under separate guidance.

III. DWSRF Program Background

The SDWA authorizes EPA to award capitalization grants to States that have established DWSRF programs complying with the requirements of section 1452. **States use a portion of these grants to capitalize a revolving Fund from which low-cost loans and other types of assistance are provided to publicly-owned and privately-owned community water systems and non-profit noncommunity water systems to finance the costs of infrastructure projects.** States must also contribute to the capitalization of their DWSRF programs by depositing State monies equaling at least 20 percent of each grant into the Fund. Loan repayments made by assistance recipients to the States return to the Fund and provide a continuing source of financing for projects. States are responsible for developing a priority system that identifies how projects will be ranked for funding and a list of projects, in priority order, that are eligible for funding.

While it is essential to address infrastructure needs of public water systems, Congress recognized the value of establishing programs which will prevent drinking water problems in the future. Therefore, States may set aside a portion of their capitalization grants to fund activities that encourage enhanced water system management and help to

prevent contamination problems through source water protection measures. The success of these set-aside activities will act to safeguard the DWSRF program funds that are provided for improving system compliance and public health protection. **The SDWA also places particular emphasis on assisting small systems serving fewer than 10,000 people and on systems serving less affluent populations by providing greater funding flexibility for these systems.**

A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State, including the Clean Water State Revolving Fund (CWSRF) program established under Title VI of the Clean Water Act (CWA). However, section 1452(g)(1)(B) of the SDWA requires that "the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with . . ." the State primacy agency, after consultation with other appropriate State agencies.

In view of this language and the overall role of the State primacy agency in SDWA programs, EPA has determined that Congress intended for the primacy agency to be the State agency which determines assistance priorities for the DWSRF program, including priorities assigned to projects and allocation of funds between the Fund and set-asides, regardless of whether or not a State combines financial administration of the Fund. Further, although the primacy agency has the authority to carry out oversight and related activities, memoranda of understanding or interagency agreements may be entered into with other State agencies to manage aspects of the DWSRF program which could include reviewing assistance applications and project bid documents, monitoring projects, and ensuring compliance with environmental review and other program requirements.

Beginning one year after a State establishes its Fund (i.e., one year after the State has received its first DWSRF program capitalization grant for projects), a State may transfer an amount equal to 33 percent of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. This provision linking the national DWSRF and the CWSRF programs signals Congressional intent for EPA and the States to implement and manage the two programs in a similar manner. To the

maximum extent practicable, EPA intends to administer the financial aspects of the national DWSRF program in a manner that is consistent with the policies and procedures of the national CWSRF program. **Each State has considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs.**

IV. Allocation of National Appropriation for DWSRF Program

Section 1452(m) of the SDWA authorizes Congress to appropriate a total of \$9.6 billion for the national DWSRF program for fiscal years 1994 through 2003.

A. National Set-Asides

National set-asides are reserved from funds annually appropriated by Congress under section 1452 of the SDWA. These national set-asides are:

(1) Indian Tribes/Alaska Native Villages. Section 1452(i) of the SDWA indicates that the Administrator may reserve 1.5 percent from annually appropriated funds under section 1452 to make grants to Indian Tribes and Alaska Native Villages. Projects for Indian Tribes and Alaska Native Villages that have not otherwise received either grant or DWSRF program assistance under section 1452 for a specific project are eligible for grant financing under this provision. EPA published the Tribal Set-aside Program Final Guidelines (EPA 816-R-98-020) in October 1998 establishing requirements for the selection of projects, project management, and program oversight for these grants. The Tribal Set-aside Program is administered by the EPA Regional Offices.

(2) Health effects studies. Section 1452(n) of the SDWA requires the Administrator to reserve \$10 million from annually appropriated funds under section 1452 to conduct health effects studies on drinking water contaminants. However, the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1998, 1999, and 2000 (Public Law 105-65, Public Law 105-276, and Public Law 106-74, respectively) have precluded the Administrator from reserving these funds from annually appropriated funds under section 1452 and have instead provided funding for health effects studies from other sources.

(3) Unregulated contaminant monitoring. Starting in fiscal year 1998, section 1452(o) of the SDWA requires the Administrator to reserve \$2 million

from annually appropriated funds under section 1452 to pay for the costs of monitoring unregulated contaminants under section 1445(a)(2)(C).

(4) Small system technical assistance. Section 1452(q) of the SDWA indicates that the Administrator may reserve up to 2 percent of the funds appropriated under section 1452 in fiscal years 1997 through 2003 to carry out the technical assistance for small systems provisions of section 1442(e) to the extent that the total amount of funding appropriated under section 1442(e) is not sufficient. The total combined amount of funds made available under this set-aside and the funds appropriated under section 1442(e) cannot exceed \$15 million per year.

(5) Operator training reimbursement. Section 1419(d)(1) of the SDWA requires the Administrator to provide grants to States to reimburse the costs of training and certifying operators of public water systems serving 3,300 persons or fewer to meet the requirements of the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems published in the **Federal Register** (64 FR 5916) on February 5, 1999. Congress has authorized \$30 million annually for fiscal years 1997 through 2003 for grants for reimbursement under section 1419(d)(3). If the appropriation for any fiscal year is not sufficient to meet training and certification costs, the Administrator will, prior to any other allocation or reservation, reserve the necessary funds from those appropriated under section 1452.

B. Allotment to States

The funds available for allotment to the States for capitalization grants are those funds appropriated by Congress under section 1452 of the SDWA less the national set-asides. For fiscal year 1997 appropriations only, section 1452(a)(1)(D)(i) required EPA to allot funds according to the formula used for distributing public water system supervision (PWSS) grants in fiscal year 1995 under section 1443. The minimum proportional share that each State received was one percent of the funds available for allotment to all of the States. This interim final rule does not include this requirement for determining the State allotment formula for fiscal year 1997 appropriations.

Beginning with fiscal year 1998 appropriations, section 1452(a)(1)(D)(ii) of the SDWA requires EPA to allot funds to each State based on the State's proportional share of total eligible needs reported for the most recent Drinking

Water Infrastructure Needs Survey conducted under section 1452(h) of the SDWA. The minimum proportional share that each State can receive is one percent of funds available for allotment to all of the States.

The first Drinking Water Infrastructure Needs Survey: First Report to Congress (EPA 812-R-97-001) was presented to Congress on January 29, 1997. Prior to finalizing this January 1997 report, EPA solicited public comment on six options for using the results to determine the allotment formula for fiscal year 1998, 1999, 2000, and 2001 appropriations and finalized the allotment formula in the **Federal Register** (62 FR 12900) on March 18, 1997.

Subsequent Drinking Water Infrastructure Needs Surveys are due to Congress every four years after the January 1997 report. The State allotment formula for fiscal year 2002 appropriations and subsequent appropriations will be adjusted to reflect the needs identified in the most recently published report.

C. Allotment to Other Jurisdictions and the District of Columbia

Section 1452(j) of the SDWA requires the Administrator to reserve up to 0.33 percent of the funds available for allotment to the States to provide grants to the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. Section 1452(a)(1)(D) of the SDWA requires the Administrator to reserve one percent of the funds available for allotment to the States to provide grants to the District of Columbia. These grants are administered by the EPA Regional Offices.

V. DWSRF Program Implementation

The DWSRF Program Interim Guidance was distributed on October 4, 1996, to allow States to begin to develop their DWSRF programs and to allow capitalization grants to be awarded as soon as possible. The notice of availability of the Interim Guidance was published in the **Federal Register** (61 FR 55635) on October 28, 1996, and announced a public comment period which ended on November 28, 1996. EPA subsequently held a series of public meetings with stakeholders to provide information about the program and to review the Interim Guidance. Comments received during the period of public comment and from attendees of the public meetings were critical in developing the DWSRF Program Final Guidelines.

The DWSRF Program Final Guidelines (EPA-816-R-97-005) were

these types of projects and activities from funding, EPA considered the intent of Congress in passing the SDWA Amendments and, in particular, the required criteria of section 1452(a)(2) that financial assistance under the DWSRF program “* * * may be used by a public water system only for expenditures * * * of a type or category which the Administrator has determined * * * will facilitate compliance with the national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of the Act.”

EPA also considered the required criteria of section 1452(b)(3)(A) of the SDWA to focus limited dollars on projects needed to address the most serious risk to human health, to ensure that the nation's drinking water is safe through compliance with the national primary drinking water regulations, and to assist those systems with the greatest economic need. Examples of such projects include installation of filtration facilities to help systems meet the Surface Water Treatment Rule, treatment technologies to meet SDWA regulated contaminants, and consolidation of systems that fail to maintain adequate technical, financial, and managerial capacity.

EPA believes that the foremost purpose of the construction and rehabilitation of dams and reservoirs and the purchase of water rights is not to improve drinking water quality, but to satisfy demand for drinking water. Providing DWSRF program assistance for these types of projects will not further the objectives Congress set out in the SDWA to the same extent as the other projects eligible under this interim final rule. The position that the construction and rehabilitation of dams and reservoirs and the purchase of water rights are ineligible for assistance from the Fund has been maintained in this interim final rule in § 35.3520 (e)(1) through (e)(3).

The DWSRF Program Final Guidelines and this interim final rule do allow for specific exceptions to the restrictions on using DWSRF program funds for the purchase of water rights and for the construction and rehabilitation of reservoirs. The exception to the restriction on the purchase of water rights is for those rights that are owned by a system that is being purchased through consolidation as part of a capacity development strategy. The exceptions to the restriction on reservoirs are finished water reservoirs and those reservoirs that are part of the treatment process

and are on the property where the treatment facility is located.

The DWSRF Program Final Guidelines and this interim final rule limit the use of DWSRF program funds for costs associated with population growth. Section 1452(g)(3) of the SDWA calls on EPA to publish guidance and regulations as may be necessary to carry out the program, including “guidance to avoid the use of funds made available under * * * [section 1452] to finance the expansion of any public water system in anticipation of future population growth.” In the legislative history to the SDWA Amendments, Congress explained that EPA is not to implement this provision in a manner that would “* * * preclude the use of SRF financing for facilities with the capacity necessary to meet the objectives of the Safe Drinking Water Act for the population to be served by the facility over its useful life.” [H. Conf. Rep. No. 104-741, at 89 (1996).]

It is clear that Congress did not intend for DWSRF program funds to be used to expand drinking water facilities solely in anticipation of future population growth. However, when read together, the language of the SDWA and its legislative history demonstrate that Congress did allow for the use of DWSRF program funds to accommodate a reasonable amount of population growth, which at the time that funding is provided, is expected to occur over the useful life of a facility. This concept is reflected in this interim final rule in § 35.3520(e)(5).

E. Inclusion of Eligible Project Reimbursement Costs Within Loans (40 CFR 35.3525(a)(2))

Several States wanted to have the flexibility to notify eligible privately-owned and publicly-owned systems that they will receive funding from the State, allow those systems to move ahead with construction, and then reimburse the systems for costs incurred in the time period between the notification and execution of the loan agreement. This flexibility would encourage systems to move ahead with construction in order to, for example, take advantage of seasonal construction cycles. This flexibility was particularly needed for privately-owned systems which cannot benefit from the refinancing provisions under section 1452(f)(2) of the SDWA.

In response to State concerns, EPA proposed a policy on the eligibility of reimbursement of incurred costs for approved projects. This policy was published in the **Federal Register** (63 FR 32208) on June 12, 1998, for a 30 day comment period. EPA also held a stakeholder meeting to discuss the

policy. After consideration of comments, a final policy was published in the **Federal Register** (64 FR 1802) on January 12, 1999. The final policy stated that a project (for a privately-owned or publicly-owned system) that has been given approval, authorization to proceed, or any similar action by the State prior to initiation of construction would be eligible for reimbursement for construction costs incurred after such State action, provided that the project meets all of the requirements of the DWSRF program and certain criteria. Planning and design and associated pre-project costs are eligible for reimbursement regardless of when the costs were incurred.

A project must be on the State's fundable list, developed using a priority system approved by EPA. However, a project on the comprehensive list which is funded due to the bypass of a project on the fundable list may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding. Projects receiving reimbursement of incurred costs are also subject to all other DWSRF program requirements applicable to a recipient of funds, including an environmental review which must consider the impacts of the project based on the pre-construction site conditions. Failure to comply with the State's environmental review process cannot be justified on the grounds that costs have already been incurred, environmental impacts have already been caused, or contractual obligations have been made prior to the binding commitment. This interim final rule reflects the provisions in the final policy.

F. Assistance From the Fund for Disadvantaged Communities (40 CFR 35.3525(b))

Section 1452(d) of the SDWA allows a State to provide additional loan subsidies to benefit communities meeting the State's definition of “disadvantaged” or which the State expects to become “disadvantaged” as a result of the project, provided that “* * * for each fiscal year, the total amount of loan subsidies made by a State * * * may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.”

This interim final rule clarifies EPA's interpretation of this provision which is that the 30 percent allowance for loan subsidies to disadvantaged communities refers to the amount of loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) that can be provided from funds associated with a particular fiscal year's capitalization grant. If a State does not

take the entire 30 percent allowance for loan subsidies associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance from future capitalization grants. For example, if a State indicates that it will use an amount equal to 20 percent of the amount of a capitalization grant for loan subsidies, it cannot reserve the authority to take an additional 10 percent from a future capitalization grant. **Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance.**

A State must indicate in its Intended Use Plan (IUP) how much of the 30 percent allowance in loan subsidies it plans to make available to disadvantaged communities. To the maximum extent practicable, a State must identify in its IUP the projects that will receive disadvantaged assistance and the respective amounts. A State can then provide loan subsidies for those projects it has identified in its IUP. Because this approach provides a great deal of flexibility to States, EPA believes that there should be constraints on the time period that States can have to commit funds taken for loan subsidies. Therefore, this interim final rule requires States to commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e). In addition, States must commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

G. Program Administration: Fees Paid Directly by an Assistance Recipient (40 CFR 35.3530(b)(2))

Many States assess fees on assistance recipients to supplement program administration and other program costs. Examples of these fees include annual loan servicing fees, application fees, loan origination fees, and processing fees. A State may assess fees on an assistance recipient which are paid directly by the recipient (discussed in this section). A State may also assess fees on an assistance recipient and provide the recipient with the funds for the fees as principal in a loan (discussed in the next section).

Fees assessed on assistance recipients, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they

are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration, other purposes for which capitalization grants can be awarded under section 1452, State match under sections 1452 (e) and (g)(2) of the SDWA, or combined financial administration of the DWSRF program and CWSRF program Funds where the programs are administered by the same State agency. Allowing fees to be used for combined financial administration enables States which administer the CWSRF and DWSRF programs under the same State agency to combine eligible funds to pay costs for financial oversight of the two programs and thereby ease their administrative burden. The uses of fees assessed on assistance recipients as provided in this interim final rule are consistent with the program income requirements of EPA's general grant regulations at 40 CFR 31.25 and offer a great deal of flexibility to States.

A State must provide information in its IUP on the rates and uses of fees it assesses on assistance recipients and give an accounting of the total dollar amount of funds it is holding in fee accounts. A State must establish in its Biennial Report that it has used the fees only for eligible purposes and must submit information on the total dollar amount in fee accounts as part of the detailed financial reports.

H. Program Administration: Fees Included as Principal in a Loan (40 CFR 35.3530(b)(3))

A State may assess fees on an assistance recipient and, within the principal of a loan, provide the recipient with the funds to pay the fees (i.e., the recipient pays the fees from the proceeds of the loan). EPA determined that such fees are permissible if they enable the State to make a loan which " * * * facilitate(s) compliance with national primary drinking water regulations * * * or otherwise significantly further(s) the health protection objectives" of the SDWA under section 1452(a)(2). However, this interim final rule imposes requirements and limitations on the amount and use of fees included as principal in a loan.

Fees included as principal in a loan, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration or other purposes for which capitalization grants can be awarded under section

1452. Fees included as principal in a loan cannot be used for State match under sections 1452 (e) and (g)(2) of the SDWA or combined financial administration of the DWSRF program and CWSRF program Funds. EPA believes that the authorized uses for fees included as principal in a loan offer a great deal of flexibility to States.

After discussions with the State/EPA SRF Work Group during meetings in July 1998 and November 1998, the following three specific limitations on fees included as principal in a loan were included in this interim final rule: (1) Fees cannot be assessed on a disadvantaged community which receives a loan subsidy provided from the 30 percent allowance in § 35.3525(b)(2); (2) fees cannot cause the effective rate of a loan (which includes both interest and fees) to exceed the market rate; and (3) fees cannot be assessed if the effective rate of a loan could reasonably be expected to cause a system to fail to meet the technical, financial, and managerial capability requirements under section 1452 of the SDWA.

A State must provide information in its IUP on the rates and uses of fees included as principal in a loan and give an accounting of the total dollar amount of funds it is holding in fee accounts. A State must establish in its Biennial Report that it has used the fees only for eligible purposes and must submit information on the total dollar amount in fee accounts as part of the detailed financial reports.

I. Transfer and Cross-Collateralization of Funds Between the DWSRF and CWSRF Programs (40 CFR 35.3530 (c) Through (d))

Section 302 of the SDWA authorizes a State to transfer up to 33 percent of the amount of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. The Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, 1998 and 1999 (Pub. L. 105-65 and Pub. L. 105-276, respectively) authorize cross-collateralization between the DWSRF and CWSRF programs.

EPA released a draft policy entitled "Transfer/Cross-collateralization Policy for the DWSRF and CWSRF" in June 1998 which specifies the provisions that States must meet in order to gain EPA approval for incorporating transfers and cross-collateralization provisions into their programs. This draft policy was developed with substantial input from EPA Regional staff, the State/EPA SRF

this interim final rule does not include the provision in section 1452(e) which allowed States to defer their matching requirement for fiscal year 1997 appropriations. Specifically, for grant payments made to States from funds appropriated in fiscal year 1997, States were authorized to defer deposit of their matching amount to no later than September 30, 1999. This flexibility was provided to those States that needed additional time to secure State funding for the required matching amount. States were required to identify the source of the matching funds in their capitalization grant applications and to agree to provide the State match for grant payments already received from fiscal year 1997 appropriations by September 30, 1999. In addition, after September 30, 1999, States could not draw Federal dollars from the EPA Automated Clearing House (ACH) for projects until the deferred State match had been expended and the States reached proportionality with previously drawn Federal dollars.

N. Preparation of an IUP (40 CFR 35.3555(a))

This interim final rule reflects the requirement in the DWSRF Program Final Guidelines that a State prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. During development of this interim final rule, several commentors objected to this requirement because they believe that the SDWA only ties the preparation of an IUP to the award of a capitalization grant and is silent on what is required of States after capitalization ends. Section 1452(b)(1) of the SDWA states that "after providing for public review and comment, each State that has entered into a capitalization grant agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State." Thus, a State that has entered into an agreement to receive a capitalization grant under section 1452 must prepare an IUP each year, regardless of whether it receives a capitalization grant in that year.

In addition, section 1452(c) requires that "the fund corpus shall be available in perpetuity for providing financial assistance under this section." This provision shows that Congress intended for State DWSRF programs to continue after capitalization ends. The primary means by which the public and EPA can ensure that this provision and the intent of Congress is satisfied is through review of the IUP. Therefore, the language in this interim final rule has

not been changed as a result of the comments received.

O. Meaningful Public Review of the IUP (40 CFR 35.3555(b))

Section 1452(b)(1) of the SDWA **requires a State to provide for public comment and review during the development of its IUP. Any State process that solicits input from a variety of interested parties, allows adequate time for the public to comment, and allows time for the State to address major comments meets the SDWA's public participation requirements for the IUP.** This interim final rule reflects the requirement in the DWSRF Program Final Guidelines that a State seek "meaningful public review and comment" during the development of its IUP. During development of this interim final rule, comments were received that EPA should define the term "meaningful public review."

This interim final rule does not include specific requirements as to what constitutes "meaningful public review" of the IUP. Due to the variation among States, no single approach will work under all conditions. However, at a minimum, States should make an effort to include interested parties, such as environmental and public health groups, that extend beyond those on existing mailing lists when seeking public review. In addition, as a guide, States should strive to achieve the following objectives when seeking public review: (1) Assure that the public has the opportunity to understand official programs and proposed actions, and that the State fully considers the public's concerns; (2) assure that the State does not make any significant decision on any activity under section 1452 without consulting interested and affected segments of the public; (3) assure that the State action is as responsive as possible to public concerns; (4) encourage public involvement in implementing section 1452; (5) keep the public informed about significant issues and proposed project or program changes as they arise; (6) foster a spirit of openness and mutual trust between the State and the public; and (7) use all feasible means to create opportunities for public participation, and to stimulate and support public participation.

P. Priority System Requirements in the IUP (40 CFR 35.3555(c)(1))

This interim final rule requires that the IUP " * * * include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for

ranking." During development of this interim final rule, several commentors indicated that EPA should not require a State to include its priority system in the IUP, but instead should allow a State to provide a summary of the priority system or a reference to where the priority system can be found. Commentors gave the following primary reasons for not wanting to include the priority system in the IUP: (1) Many of the priority systems are complex and are not readily understood by the public, especially if the systems are in regulation; (2) including the priority system within the text of the IUP simply elongates and clutters the IUP and discourages people from reading it; and (3) including the priority system gives the impression to the public that the State is seeking additional comments when, in actuality, the priority system has already undergone public review and comment.

The language in this interim final rule has not been changed as a result of the comments received because EPA believes that the public should be given every opportunity to understand the basis for ranking projects. EPA believes that the language in this rule does not preclude a State that has a very complicated priority system which is difficult for the public to understand from developing a detailed summary that describes the criteria used to assess the priority for ranking individual projects, including points. In addition, if a State does not want to include the priority system within the text of the IUP, it can include the system as an attachment that is distributed with the IUP. Finally, a State can indicate in the IUP that the priority system was developed with public comment and therefore it is not taking additional comments, but the State is providing the information so that the public can understand the basis for ranking of projects.

Q. Cash Draw Rules (40 CFR 35.3560 and 35.3565)

This interim final rule details the specific requirements for how States access capitalization grant funds through the EPA ACH, which is a Federal funds transfer system to electronically deposit funds into a grant recipient's bank account. In § 35.3560 of this interim final rule, the general cash draw rules are provided for how States access capitalization grant funds through the ACH, including the formula for calculating the proportionate Federal share. In § 35.3565 of this interim final rule, the specific cash draw rules are provided for how States access capitalization grant funds through the

installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source*. Examples of projects include rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage*. Examples of projects include installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation*. Eligible projects are those needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems*. Eligible projects are those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. A project must be a cost-effective solution to addressing the problem. A State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem. Capacity to serve future population growth cannot be a substantial portion of a project.

(c) *Eligible project-related costs*. In addition to costs needed for the project itself, the following project-related costs are eligible for assistance from the Fund:

(1) Costs for planning and design and associated pre-project costs. A State that makes a loan for only planning and design is not required to provide assistance for completion of the project.

(2) Costs for the acquisition of land only if needed for the purposes of locating eligible project components. The land must be acquired from a willing seller.

(3) Costs for restructuring systems that are in significant noncompliance with

any national primary drinking water regulation or variance or that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the systems are ineligible under paragraph (d)(2) or (d)(3) of this section.

(d) *Ineligible systems*. Assistance from the Fund may not be provided to:

(1) Federally-owned public water systems and for-profit noncommunity water systems.

(2) Systems that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the assistance will ensure compliance and the owners or operators of the systems agree to undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

(3) Systems that are in significant noncompliance with any national primary drinking water regulation or variance, unless:

(i) The purpose of the assistance is to address the cause of the significant noncompliance and will ensure that the systems return to compliance; or

(ii) The purpose of the assistance is unrelated to the cause of the significant noncompliance and the systems are on enforcement schedules (for maximum contaminant level and treatment technique violations) or have compliance plans (for monitoring and reporting violations) to return to compliance.

(e) *Ineligible projects*. The following projects are ineligible for assistance from the Fund:

(1) Dams or rehabilitation of dams.

(2) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.

(3) Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.

(4) Projects needed primarily for fire protection.

(5) Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.

(6) Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under section 1452(i) of the Act.

(f) *Ineligible project-related costs*. The following project-related costs are ineligible for assistance from the Fund:

(1) Laboratory fees for routine compliance monitoring.

(2) Operation and maintenance expenses.

§ 35.3525 Authorized types of assistance from the Fund.

A State may only provide the following types of assistance from the Fund:

(a) *Loans*. (1) A State may make loans at or below the market interest rate, including zero interest rate loans. Loans may be awarded only if:

(i) An assistance recipient begins annual repayment of principal and interest no later than one year after project completion. A project is completed when operations are initiated or are capable of being initiated.

(ii) A recipient completes loan repayment no later than 20 years after project completion except as provided in paragraph (b)(3) of this section.

(iii) A recipient establishes a dedicated source of revenue for repayment of the loan which is consistent with local ordinances and State laws or, for privately-owned systems, a recipient demonstrates that there is adequate security to assure repayment of the loan.

(2) A State may include eligible project reimbursement costs within loans if:

(i) A system received approval, authorization to proceed, or any similar action by a State prior to initiation of project construction and the construction costs were incurred after such State action; and

(ii) The project met all of the requirements of this subpart and was on the State's fundable list, developed using a priority system approved by EPA. A project on the comprehensive list which is funded when a project on the fundable list is bypassed using the State's bypass procedures in accordance with § 35.3555(c)(2)(ii) may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding.

(3) A State may include eligible planning and design and other associated pre-project costs within loans regardless of when the costs were incurred.

(4) All payments of principal and interest on each loan must be credited to the Fund.

(5) Of the total amount available for assistance from the Fund each year, a State must make at least 15 percent available solely for providing loan assistance to small systems, to the extent such funds can be obligated for eligible projects. A State that provides assistance in an amount that is greater

than 15 percent of the available funds in one year may credit the excess toward the 15 percent requirement in future years.

(6) A State may provide incremental assistance for a project (e.g., for a particularly large, expensive project) over a period of years.

(b) Assistance to disadvantaged communities. (1) A State may provide loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) to benefit communities meeting the State's definition of "disadvantaged" or which the State expects to become "disadvantaged" as a result of the project. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance described in paragraph (b)(2) of this section.

(2) A State may take an amount equal to no more than 30 percent of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities. If a State does not take the entire 30 percent allowance associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance of the allowance from future capitalization grants. In addition, a State must:

(i) Indicate in the Intended Use Plan (IUP) the amount of the allowance it is taking for loan subsidies;

(ii) Commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e); and

(iii) Commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

(3) A State may extend the term for a loan to a disadvantaged community, provided that a recipient completes loan repayment no later than 30 years after project completion and the term of the loan does not exceed the expected design life of the project.

(c) Refinance or purchase of local debt obligations.—(1) *General.* A State may buy or refinance local debt obligations of municipal, intermunicipal, or interstate agencies where the debt obligation was incurred and the project was initiated after July 1, 1993. Projects must have met the eligibility requirements under section 1452 of the Act and this subpart to be

eligible for refinancing. Privately-owned systems are not eligible for refinancing.

(2) *Multi-purpose debt.* If the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to eligible purposes under section 1452 of the Act and this subpart, a State may provide refinancing only for the eligible portion of the debt, not the entire debt.

(3) *Refinancing and State match.* If a State has credited repayments of loans made under a pre-existing State loan program as part of its State match, the State cannot also refinance the projects under the DWSRF program. If the State has already counted certain projects toward its State match which it now wants to refinance, the State must provide replacement funds for the amounts previously credited as match.

(d) Purchase insurance or guarantee for local debt obligations. A State may provide assistance by purchasing insurance or guaranteeing a local debt obligation to improve credit market access or to reduce interest rates.

Assistance of this type is limited to local debt obligations that are undertaken to finance projects eligible for assistance under section 1452 of the Act and this subpart.

(e) Revenue or security for Fund debt obligations (leveraging). A State may use Fund assets as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State in order to increase the total amount of funds available for providing assistance. The net proceeds of the sale of the bonds must be deposited into the Fund and must be used for providing loans and other assistance to finance projects eligible under section 1452 of the Act and this subpart.

§ 35.3530 Limitations on uses of the Fund.

(a) *Earn interest.* A State may earn interest on monies deposited into the Fund prior to disbursement of assistance (e.g., on reserve accounts used as security or guarantees). Monies deposited must not remain in the Fund primarily to earn interest. Amounts not required for current obligation or expenditure must be invested in interest bearing obligations.

(b) *Program administration.* A State may not use monies deposited into the Fund to cover its program administration costs. In addition to using the funds available from the administration and technical assistance set-aside under § 35.3535(b), a State may use the following methods to cover its program administration and other program costs.

(1) A State may use the proceeds of bonds guaranteed by the Fund to absorb expenses incurred issuing the bonds. The net proceeds of the bonds must be deposited into the Fund.

(2) A State may assess fees on an assistance recipient which are paid directly by the recipient and are not included as principal in a loan as allowed in paragraph (b)(3) of this section. These fees, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration, other purposes for which capitalization grants can be awarded under section 1452, State match under sections 1452(e) and (g)(2) of the Act, or combined financial administration of the DWSRF program and CWSRF program Funds where the programs are administered by the same State agency.

(3) A State may assess fees on an assistance recipient which are included as principal in a loan. These fees, which include interest earned on fees, must be deposited into the Fund or into an account outside of the Fund. If the fees are deposited into the Fund, they are subject to the authorized uses of the Fund. If the fees are deposited into an account outside of the Fund, they must be used for program administration or other purposes for which capitalization grants can be awarded under section 1452. Fees included as principal in a loan cannot be used for State match under sections 1452(e) and (g)(2) of the Act or combined financial administration of the DWSRF program and CWSRF program Funds. Additionally, fees included as principal in a loan:

(i) Cannot be assessed on a disadvantaged community which receives a loan subsidy provided from the 30 percent allowance in § 35.3525(b)(2);

(ii) Cannot cause the effective rate of a loan (which includes both interest and fees) to exceed the market rate; and

(iii) Cannot be assessed if the effective rate of a loan could reasonably be expected to cause a system to fail to meet the technical, financial, and managerial capability requirements under section 1452 of the Act.

(c) *Transfers.* The Governor of a State, or a State official acting pursuant to authorization from the Governor, may transfer an amount equal to 33 percent of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from

Chapter 10c

Water Development Coordinating Council

73-10c-1 Legislative findings.

The Legislature finds that the conservation, development, treatment, restoration, and protection of the waters of this arid state are a state purpose and a matter of statewide concern. The needs and requirements associated with conserving, developing, treating, restoring, and protecting the waters of this state are of such magnitude and complexity that they justify state participation and assistance. The federal Safe Drinking Water Act, 42 United States Code Annotated Secs. 300f et seq. (federal drinking water act) establishes a national policy to ensure delivery of safe drinking water to the public, establishes maximum pollution levels, monitoring and reporting requirements and provides penalties, including the assessment of fines, for political subdivisions that violate the act. The Federal Water Pollution Control Act, Title 33, Chapter 26, United States Code (federal water pollution control act), establishes a national policy and program for the restoration, preservation, and protection of the nation's waters. The political subdivisions of this state are prohibited by the federal water pollution control act from polluting the navigable waters of the United States and are subject to various penalties, including the assessment of fines, for failing to meet the minimum standards of the federal water pollution control act. Pursuant to the requirements of the federal pollution control act, the state has established water quality standards and effluent limitations with respect to the waters of this state. These standards and limitations have been adopted by the United States Environmental Protection Agency for the purpose of issuing permits for wastewater projects and the state must certify compliance with these standards and limitations in order for the federal permit to be obtained. Under the federal water pollution control act, the state and its political subdivisions may receive grants, subject to the availability of funds, to meet the requirements of the federal water pollution control act if the state or its political subdivisions make contributions to the nonfederal share of construction costs of treatment works. It is desirable that the state assist in providing financing mechanisms to aid political subdivisions in securing needed water treatment and transporting water and in the acquisition and construction of drinking water projects and wastewater projects in order to accomplish the foregoing purposes, to protect the public health and welfare, to meet the anticipated growth in the state and to encourage development of the state's resources.

Enacted by Chapter 354, 1983 General Session

73-10c-2 Definitions.

As used in this chapter:

- (1) "Board" means the Board of Water Resources created in Section 73-10-1.5.
- (2) "Council" means the Water Development Coordinating Council created by Sections 79-2-201 and 73-10c-3.
- (3) "Credit enhancement agreement" means an agreement entered into according to this chapter between the Drinking Water Board or the Water Quality Board, on behalf of the state, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of drinking water project obligations and wastewater project obligations.
- (4) "Drinking Water Board" means the Drinking Water Board appointed according to Section 19-4-103.

- (5) "Drinking water or wastewater project obligation" means, as appropriate, any bond, note, or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading, or improving a drinking water project or wastewater project.
- (6)
 - (a) "Drinking water project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses and:
 - (i) has at least 15 service connections; or
 - (ii) serves an average of 25 individuals daily for at least 60 days of the year.
 - (b) "Drinking water project" includes:
 - (i) collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system;
 - (ii) collection pretreatment or storage facilities used primarily in connection with the system but not under operator's control; and
 - (iii) studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.
- (7) "Financial assistance programs" means the various programs administered by the state whereby loans, grants, and other forms of financial assistance are made available to political subdivisions of this state to finance the costs of water and wastewater projects.
- (8) "Hardship Grant Assessment" means the charge the Water Quality Board or Drinking Water Board assesses to recipients of loans made from the subaccount created in Subsection 73-10c-5(2)(b) or 73-10c-5(3)(b) in lieu of or in addition to interest charged on these loans.
- (9) "Nonpoint source project" means a facility, system, practice, study, activity, or mechanism that abates, prevents, or reduces the pollution of waters of this state by a nonpoint source.
- (10) "Political subdivision" means a county, city, town, improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of this state.
- (11) "Security fund" means the Water Development Security Fund created in Section 73-10c-5.
- (12) "Wastewater project" means:
 - (a) a sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state; and
 - (b) a study, pollution prevention activity, or pollution education activity that will protect the waters of this state.
- (13) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water whether surface, underground, natural, artificial, public, private, or other water resource of the state which is contained within or flows in or through the state.
- (14) "Water Quality Board" means the Water Quality Board appointed according to Section 19-5-103.

Amended by Chapter 344, 2009 General Session

73-10c-3 Water Development Coordinating Council created -- Purpose -- Members.

- (1)

- (a) There is created within the Department of Natural Resources a Water Development Coordinating Council. The council comprises:
 - (i) the director of the Division of Water Resources;
 - (ii) the executive secretary of the Water Quality Board;
 - (iii) the executive secretary of the Drinking Water Board;
 - (iv) the director of the Housing and Community Development Division or the director's designee; and
 - (v) the state treasurer or the treasurer's designee.
- (b) The council shall choose a chair and vice chair from among its own members.
- (c) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (2) The purposes of the council are to:
 - (a) coordinate the use and application of the funds available to the state to give financial assistance to political subdivisions of this state so as to promote the conservation, development, treatment, restoration, and protection of the waters of this state;
 - (b) promote the coordination of the financial assistance programs administered by the state and the use of the financing alternative most economically advantageous to the state and its political subdivisions;
 - (c) promote the consideration by the Board of Water Resources, Drinking Water Board, and Water Quality Board of regional solutions to the water and wastewater needs of individual political subdivisions of this state; and
 - (d) assess the adequacy and needs of the state and its political subdivisions with respect to water-related infrastructures and advise the governor and the Legislature on those funding needs.

Amended by Chapter 212, 2012 General Session

73-10c-4 Credit enhancement and interest buy-down agreements -- Loans or grants -- Hardship grants.

- (1) On behalf of the state, the Water Quality Board and the Drinking Water Board may each enter into credit enhancement agreements with political subdivisions containing terms and provisions that the acting board determines will reasonably improve the security for or marketability of drinking water and wastewater project obligations, including any of the following:
 - (a) a term providing security for drinking water and wastewater project obligations, as provided in Subsection 73-10c-6(2)(b), by agreeing to purchase the drinking water or wastewater project obligations of, or to make loans to, political subdivisions from a subaccount of the security fund for the purpose of preventing defaults in the payment of principal and interest on drinking water and wastewater project obligations;
 - (b) a term making loans to political subdivisions to pay the cost of obtaining:
 - (i) letters of credit from banks, savings and loan institutions, insurance companies, or other financial institutions;
 - (ii) municipal bond insurance; or
 - (iii) other forms of insurance or security to provide security for drinking water and wastewater project obligations; and

- (c) a term providing other methods and assistance to political subdivisions that are reasonable and proper to enhance the marketability of or security for drinking water and wastewater project obligations.
- (2)
- (a) The Drinking Water Board and the Water Quality Board may each make loans from a security fund subaccount to political subdivisions to finance all or part of drinking water and wastewater project costs by following the procedures and requirements of Sections 73-10c-4.1 and 73-10c-4.2.
 - (b) These loans may only be made after credit enhancement agreements, interest buy-down agreements, and all other financing alternatives have been evaluated by the acting board and the board determines those options are unavailable or unreasonably expensive for the subdivision requesting assistance.
 - (c) Loans may be made from the security fund subaccount at interest rates determined by the board.
- (3)
- (a) The Drinking Water Board and the Water Quality Board may each make loans or grants from the security fund to political subdivisions for interest buy-down agreements for drinking water or wastewater project obligations.
 - (b) The Drinking Water Board may make loans or grants from the security account to political subdivisions for planning for drinking water projects.
- (4)
- (a) Of the total amount of money annually available to the Drinking Water Board and Water Quality Board for financial assistance to political subdivisions, at least 10% shall be allocated by each board for credit enhancement and interest buy-down agreements.
 - (b) The requirement specified in Subsection (4)(a) shall apply only so long as sales and use tax is transferred to the Utah Wastewater Loan Program Subaccount and Drinking Water Loan Program Subaccount as provided in Section 59-12-103.
- (5) To the extent money is available in the hardship grant subaccounts of the security fund, the Drinking Water Board and the Water Quality Board may each make grants to political subdivisions that meet the drinking water or wastewater project loan considerations respectively, but whose projects are determined by the granting board to not be economically feasible unless grant assistance is provided.
- (6) The Drinking Water and Water Quality Boards may at any time transfer money out of their respective hardship grant subaccounts of the security fund to their respective loan program subaccounts.
- (7) The Water Quality Board may make a grant from the Hardship Grant Program for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(c) for a nonpoint source project as provided by Section 73-10c-4.5 if:
- (a) money is available in the subaccount; and
 - (b) the Water Quality Board determines that the project would not be economically feasible unless a grant were made.

Amended by Chapter 142, 2007 General Session

73-10c-4.1 Wastewater projects -- Loan criteria and requirements -- Process for approval.

- (1) The Water Quality Board shall review the plans and specifications for a wastewater project before approval of any loan and may condition approval on the availability of loan funds and

on assurances that the Water Quality Board considers necessary to ensure that loan funds are used to pay the wastewater project costs and that the wastewater project is completed.

- (2)
 - (a) Each loan shall specify the terms for repayment, with the term, interest rate or rates, including a variable rate, and security as determined by the Water Quality Board.
 - (b) The loan may be evidenced by general obligation or revenue bonds or other obligations of the political subdivision.
 - (c) Loan payments made by a political subdivision shall be deposited in the Water Quality Security Subaccount as described in Section 73-10c-5.
 - (d) The loans are subject to the provisions of Title 63B, Chapter 1b, State Financing Consolidation Act.
- (3) In determining the priority for a wastewater project loan, the Water Quality Board shall consider:
 - (a) the ability of the political subdivision to obtain money for the wastewater project from other sources or to finance the project from its own resources;
 - (b) the ability of the political subdivision to repay the loan;
 - (c) whether or not a good faith effort to secure all or part of the services needed from the private sector of the economy has been made; and
 - (d) whether or not the wastewater project:
 - (i) meets a critical local or state need;
 - (ii) is cost effective;
 - (iii) will protect against present or potential health hazards;
 - (iv) is needed to comply with minimum standards of the federal Water Pollution Control Act, Title 33, Chapter 26, United States Code, or any similar or successor statute;
 - (v) is needed to comply with the minimum standards of Title 19, Chapter 5, Water Quality Act, or any similar or successor statute;
 - (vi) is designed to reduce the pollution of the waters of this state; and
 - (vii) meets any other consideration considered necessary by the Water Quality Board.
- (4) In determining the cost effectiveness of a wastewater project the Water Quality Board shall:
 - (a) require the preparation of a cost-effective analysis of feasible wastewater treatment or conveyance alternatives capable of meeting state and federal water quality and public health requirements;
 - (b) consider monetary costs, including the present worth or equivalent annual value of all capital costs and operation, maintenance, and replacement costs; and
 - (c) ensure that the alternative selected is the most economical means of meeting applicable state and federal wastewater and water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.
- (5) A loan may not be made for a wastewater project that is not in the public interest as determined by the Water Quality Board.

Amended by Chapter 382, 2008 General Session

73-10c-4.2 Drinking water projects -- Loan criteria and requirements -- Process for approval.

- (1) The Drinking Water Board shall review the plans and specifications for a drinking water project before approval of any loan and may condition approval on the availability of loan funds and on the assurances that the Drinking Water Board considers necessary to ensure that loan funds are used to pay the drinking water project costs and that the drinking water project is completed.
- (2)

- (a) Each loan shall specify the terms for repayment, with the term, interest rate or rates, including a variable rate, and security as determined by the Drinking Water Board.
 - (b) The loan may be evidenced by general obligation or revenue bonds or other obligations of the political subdivision.
 - (c) Loan payments made by a political subdivision shall be deposited in the Drinking Water Security Subaccount as described in Section 73-10c-5.
 - (d) The loans are subject to the provisions of Title 63B, Chapter 1b, State Financing Consolidation Act.
- (3) In determining the priority for a drinking water project loan, the Drinking Water Board shall consider:
- (a) the ability of the political subdivision to obtain money for the drinking water project from other sources or to finance such project from its own resources;
 - (b) the ability of the political subdivision to repay the loan;
 - (c) whether or not a good faith effort to secure all or part of the services needed from the private sector of the economy has been made; and
 - (d) whether or not the drinking water project:
 - (i) meets a critical local or state need;
 - (ii) is cost effective;
 - (iii) will protect against present or potential health hazards;
 - (iv) is needed to comply with minimum standards of the federal Safe Drinking Water Act, or any similar or successor statute;
 - (v) is needed to comply with the minimum standards of Title 19, Chapter 4, Safe Drinking Water Act, or any similar or successor statute; and
 - (vi) meets any other consideration considered necessary by the Drinking Water Board.
- (4) In determining the cost effectiveness of a drinking water project the Drinking Water Board shall:
- (a) require the preparation of a cost-effective analysis of feasible drinking water projects;
 - (b) consider monetary costs, including the present worth or equivalent annual value of all capital costs and operation, maintenance, and replacement cost; and
 - (c) ensure that the alternative selected is the most economical means of meeting applicable water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.
- (5) A loan may not be made for a drinking water project that is not in the public interest as determined by the Drinking Water Board.

Amended by Chapter 382, 2008 General Session

73-10c-4.5 Nonpoint source project loans and grants -- Project objectives -- Water Quality Board duties.

- (1) The Water Quality Board may make a loan from the Utah Wastewater Loan Program Subaccount created in Subsection 73-10c-5(2)(a) or from the Utah State Revolving Fund for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(b) or a grant from the Hardship Grant Program for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(c) to a political subdivision, individual, corporation, association, state or federal agency, or other private entity to acquire, construct, or implement a nonpoint source project.
- (2) The Water Quality Board may only award a loan or grant for a nonpoint source project that will achieve one or more of the following objectives:
 - (a) abate or reduce raw sewage discharges;
 - (b) repair or replace failing individual on-site wastewater disposal systems;