

Environmental Protection Agency

§ 35.3510

Disbursement. The transfer of cash from the DWSRF program account established in the State's bank to an assistance recipient.

DWSRF program. Each State's drinking water state revolving fund program authorized under section 1452 of the Act, as amended, 42 U.S.C. 300j-12. This term includes the Fund and set-asides.

Fund. A revolving account into which a State deposits DWSRF program funds (e.g., capitalization grants, State match, repayments, net bond proceeds, interest earnings, etc.) for the purposes of providing loans and other types of assistance for drinking water infrastructure projects.

Intended Use Plan (IUP). A document prepared annually by a State, after public review and comment, which identifies intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

Net bond proceeds. The funds raised from the sale of the bonds minus issuance costs (e.g., the underwriting discount, underwriter's legal counsel fees, bond counsel fee, and other costs incidental to the bond issuance).

Payment. An action taken by EPA to increase the amount of funds available for cash draw through the ACH. A payment is not a transfer of cash to the State, but an authorization by EPA to make capitalization grant funds available for transfer to a State after the State submits a cash draw request.

Public water system. A system as defined in 40 CFR 141.2. A public water system is either a "community water system" or a "noncommunity water system" as defined in 40 CFR 141.2.

Regional Administrator (RA). The Administrator of the appropriate Regional Office of the EPA or an authorized representative of the Regional Administrator.

Set-asides. State and local activities identified in sections 1452(g)(2) and (k) of the Act for which a portion of a capitalization grant may be used.

Small system. A public water system that regularly serves 10,000 or fewer persons.

State. 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 Act.

§ 35.3510 Establishment of the DWSRF program.

(a) *General.* To be eligible to receive a capitalization grant, a State must establish a Fund and comply with the other requirements of section 1452 of the Act and this subpart.

(b) *Administration.* Capitalization grants must be awarded to an agency of the State that is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart. The State agency that is awarded the capitalization grant (*i.e.*, grantee) is accountable for the use of the funds provided in the capitalization grant agreement under general grant regulations at 40 CFR part 31.

(1) The authority to establish assistance priorities and to carry out oversight and related activities of the DWSRF program, other than financial administration of the Fund, must reside with the State agency having primary responsibility for administration of the State's public water system supervision (PWSS) program (*i.e.*, primacy) after consultation with other appropriate State agencies.

(2) If a State is eligible to receive a capitalization grant but does not have primacy, the Governor will determine which State agency will have the authority to establish priorities for financial assistance from the Fund. Evidence of the Governor's determination must be included with the capitalization grant application.

(3) If more than one State agency participates in implementation of the DWSRF program, the roles and responsibilities of each agency must be described in a Memorandum of Understanding or interagency agreement.

(c) *Combined financial administration.* A State may combine the financial administration of the Fund with the financial administration of any other revolving fund established by the State if otherwise not prohibited by State law under which the Fund was established. A State must assure that all monies in

the Fund, including capitalization grants, State match, net bond proceeds, loan repayments, and interest are separately accounted for and used solely for the purposes specified in section 1452 of the Act and this subpart. Funds available from the administration and technical assistance set-aside may not be used for combined financial administration of any other revolving fund.

(d) *Use of funds.* (1) Assistance provided to a public water system from the DWSRF program may be used only for expenditures that will facilitate compliance with national primary drinking water regulations applicable under section 1412 or otherwise significantly further the public health protection objectives of the Act.

(2) The inability or failure of any public water system to receive assistance from the DWSRF program, or any delay in obtaining assistance, does not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of section 1452 of the Act.

§ 35.3515 Allotment and withholdings of funds.

(a) *Allotment—(1) General.* Each State will receive a minimum of one percent of the funds available for allotment to all of the States.

(2) *Allotment formula.* Funds available to States from fiscal year 1998 appropriations and subsequent appropriations are allotted according to a formula that reflects the infrastructure needs of public water systems identified in the most recent Needs Survey submitted in accordance with section 1452(h) of the Act.

(3) *Period of availability.* Funds are available for obligation to States during the fiscal year in which they are authorized and during the following fiscal year. The amount of any allotment not obligated to a State by EPA at the end of this period of availability will be reallocated to eligible States based on the formula originally used to allot these funds, except that the Administrator may reserve up to 10 percent of any funds available for reallocation to provide additional assistance to Indian Tribes. In order to be eligible to receive reallocated funds, a State must

have been obligated all funds it is eligible to receive from EPA during the period of availability.

(4) *Loss of primacy.* The following provisions do not apply to any State that did not have primacy as of August 6, 1996:

(i) A State may not receive a capitalization grant from allotments that have been made if the State had primacy and subsequently loses primacy.

(ii) For a State that loses primacy, the Administrator may reserve funds from the State's allotment for use by EPA to administer primacy in that State. The balance of the funds not used by EPA to administer primacy will be reallocated to the other States.

(iii) A State will be eligible for future allotments from funds appropriated in the next fiscal year after primacy is restored.

(b) *Withholdings—(1) General.* EPA will withhold funds under each of the following provisions:

(i) *Capacity development authority.* EPA will withhold 20 percent of a State's allotment from any State that has not obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operations after October 1, 1999, demonstrate technical, financial, and managerial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations. The determination of withholding will be based on an assessment of the status of the State program as of October 1 of the fiscal year for which the funds were allotted.

(ii) *Capacity development strategy.* EPA will withhold funds from any State unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, financial, and managerial capacity. The amount of a State's allotment that will be withheld is 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for each subsequent fiscal year. The determination of withholding will be based on an assessment of the status of the State strategy as of October 1 of the fiscal year for which the funds were