

Environmental Protection Agency

§ 35.3525

(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