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procedures to assure that assistance recipients have a dedicated source of revenue for repayment of loans, or in the case of privately-owned systems, assure that recipients demonstrate that there is adequate security to assure repayment of loans.

(l) *Efficient expenditure.* A State must agree to commit and expend all funds as efficiently as possible and in an expeditious and timely manner.

(m) *Use funds in accordance with IUP.* A State must agree to use all funds in accordance with an IUP that was prepared after providing for public review and comment.

(n) *Biennial report.* A State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreements. The State must submit this report to the RA according to the schedule established in the capitalization grant agreement.

(o) *Comply with cross-cutters.* A State must agree to comply with all applicable Federal cross-cutting authorities.

(p) *Comply with provisions to avoid withholdings.* A State must agree to demonstrate how it is complying with the requirements of capacity development authority, capacity development strategy, and operator certification program provisions in order to avoid withholdings of funds under § 35.3515(b)(1)(i) through (b)(1)(iii).

§ 35.3555 Intended Use Plan (IUP).

(a) *General.* A State must prepare an annual IUP which describes how it intends to use DWSRF program funds to support the overall goals of the DWSRF program and contains the information outlined in paragraph (c) of this section. In those years in which a State submits a capitalization grant application, EPA must receive an IUP prior to the award of the capitalization grant. A State must prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. The IUP must conform to the fiscal year adopted by the State for the DWSRF program (e.g., the State's fiscal year or the Federal fiscal year).

(b) *Public review requirements.* A State must seek meaningful public review and comment during the development of the IUP. A State must include a description of the public review process and an explanation of how it responded to major comments and concerns. If a State prepares separate IUPs (one for Fund monies and one for set-aside monies), the State must seek public review and comment during the development of each IUP.

(c) *Content.* Information in the IUP must be provided in a format and manner that is consistent with the needs of the RA.

(1) *Priority system.* The IUP must 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. The priority system must provide, to the maximum extent practicable, that priority for the use of funds will be given to projects that: address the most serious risk to human health; are necessary to ensure compliance with the requirements of the Act (including requirements for filtration); and assist systems most in need, on a per household basis, according to State affordability criteria. A State that does not adhere to the three criteria must demonstrate why it is unable to do so.

(2) *Priority lists of projects.* All projects, with the exception of projects funded on an emergency basis, must be ranked using a State's priority system and go through a public review process prior to receiving assistance.

(i) The IUP must contain a fundable list of projects that are expected to receive assistance from available funds designated for use in the current IUP and a comprehensive list of projects that are expected to receive assistance in the future. The fundable list of projects must include: the name of the public water system; the priority assigned to the project; a description of the project; the expected terms of financial assistance based on the best information available at the time the IUP is developed; and the population of the system's service area at the time of the loan application. The comprehensive list must include, at a minimum, the priority assigned to each project and, to the extent known, the expected funding schedule for each project. A

State may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

(ii) The IUP may include procedures which would allow a State to bypass projects on the fundable list. The procedures must clearly identify the conditions which would allow a project to be bypassed and the method for identifying which projects would receive funding. If a bypass occurs, a State must fund the highest ranked project on the comprehensive list that is ready to proceed. If a State elects to bypass a project for reasons other than readiness to proceed, the State must explain why the project was bypassed in the Biennial Report and during the annual review. To the maximum extent practicable, a State must work with bypassed projects to ensure that they will be prepared to receive funding in future years.

(iii) The IUP may allow for the funding of projects which require immediate attention to protect public health on an emergency basis, provided that a State defines what conditions constitute an emergency and identifies the projects in the Biennial Report and during the annual review.

(iv) The IUP must demonstrate how a State will meet the requirement of providing loan assistance to small systems as described in § 35.3525(a)(5). A State that is unable to comply with this requirement must describe the steps it is taking to ensure that a sufficient number of projects are identified to meet this requirement in future years.

(3) *Distribution of funds.* The IUP must describe the criteria and methods that a State will use to distribute all funds including:

(i) The process and rationale for distribution of funds between the Fund and set-aside accounts;

(ii) The process for selection of systems to receive assistance;

(iii) The rationale for providing different types of assistance and terms, including the method used to determine the market rate and the interest rate;

(iv) The types, rates, and uses of fees assessed on assistance recipients; and

(v) A description of the financial planning process undertaken for the Fund and the impact of funding decisions on the long-term financial health of the Fund.

(4) *Financial status.* The IUP must describe the sources and uses of DWSRF program funds including: the total dollar amount in the Fund; the total dollar amount available for loans, including loans to small systems; the amount of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); the total dollar amount in set-aside accounts, including the amount of funds or authority reserved; and the total dollar amount in fee accounts.

(5) *Short- and long-term goals.* The IUP must describe the short-term and long-term goals it has developed to support the overall goals of the DWSRF program of ensuring public health protection, complying with the Act, ensuring affordable drinking water, and maintaining the long-term financial health of the Fund.

(6) *Set-aside activities.* (i) The IUP must identify the amount of funds a State is electing to use for set-aside activities. A State must also describe how it intends to use these funds, provide a general schedule for their use, and describe the expected accomplishments that will result from their use.

(ii) For loans made in accordance with the local assistance and other State programs set-aside under § 35.3535(e)(1)(i) and (e)(1)(ii), the IUP must, at a minimum, describe the process by which recipients will be selected and how funds will be distributed among them.

(7) *Disadvantaged community assistance.* The IUP must describe how a State's disadvantaged community program will operate including:

(i) The State's definition of what constitutes a disadvantaged community;

(ii) A description of affordability criteria used to determine the amount of disadvantaged assistance;

(iii) The amount and type of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); and

(iv) To the maximum extent practicable, an identification of projects that will receive disadvantaged assistance and the respective amounts.

(8) *Transfer process.* If a State decides to transfer funds between the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The total amount and type of funds being transferred during the period covered by the IUP;

(ii) The total amount of authority being reserved for future transfer, including the authority reserved from previous years; and

(iii) The impact of the transfer on the amount of funds available to finance projects and set-asides and the long-term impact on the Fund.

(9) *Cross-collateralization process.* If a State decides to cross-collateralize Fund assets of the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The type of monies which will be used as security;

(ii) How monies will be used in the event of a default; and

(iii) Whether or not monies used for a default in the other program will be repaid, and if they will not be repaid, what will be the cumulative impact on the Funds.

(d) *Amending the IUP.* The priority lists of projects may be amended during the year under provisions established in the IUP as long as additions or other substantive changes to the lists, except projects funded on an emergency basis, go through a public review process. A State may change the use of funds from what was originally described in the IUP as long as substantive changes go through a public review process.

§ 35.3560 General payment and cash draw rules.

(a) *Payment schedule.* A State will receive each capitalization grant payment in the form of an increase to the ceiling of funds available through the ACH, made in accordance with a payment schedule negotiated between EPA and the State. A payment schedule that is based on a State's projection of binding commitments and use of set-aside funds as stated in the IUP must be included in the capitalization grant agreement. Changes to the payment schedule must be made through an amendment to the grant agreement.

(b) *Timing of payments.* All payments to a State will be made by the earlier of 8 quarters after the capitalization grant is awarded or 12 quarters after funds are allotted to a State.

(c) *Funds available for cash draw.* Cash draws will be available only up to the amount of payments that have been made to a State.

(d) *Estimated cash draw schedule.* On a schedule negotiated with EPA, a State must provide EPA with a quarterly schedule of estimated cash draws for the Federal fiscal year. The State must notify EPA when significant changes from the estimated cash draw schedule are anticipated. This schedule must be developed to conform with the procedures applicable to cash draws and must have sufficient detail to allow EPA and the State to jointly develop and maintain a forecast of cash draws.

(e) *Cash draw for set-asides.* A State may draw cash through the ACH for the full amount of costs incurred for set-aside expenditures based on EPA approved workplans. A State may draw cash in advance to ensure funds are available to meet State payroll expenses. However, cash should be drawn no sooner than necessary to meet immediate payroll disbursement needs.

(f) *Cash draw for Fund.* A State may draw cash through the ACH for the proportionate Federal share of eligible incurred project costs. A State need not have disbursed funds for incurred project costs prior to drawing cash. A State may not draw cash for a particular project until the State has executed a loan agreement for that project.

(g) *Calculation of proportionate Federal share*—(1) *General.* The proportionate Federal share is equal to the Federal monies intended for the Fund (capitalization grant minus set-asides) divided by the total amount of monies intended for the Fund (capitalization grant minus set-asides plus required State match). A State may calculate the proportionate Federal share on a