

significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.

**(ii) Contents**

The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 3161 of title 42.

**(B) Existing criteria**

If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)—

(i) the State may use the criteria for the purposes of this subsection; and

(ii) those criteria shall be treated as affordability criteria established under this paragraph.

**(C) Information to assist States**

The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).

**(3) Limitations**

**(A) In general**

A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this subchapter for the fiscal year exceeds \$1,000,000,000.

**(B) Additional limitation**

**(i) General rule**

Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization grants under this subchapter for a fiscal year for providing additional subsidization under this subsection.

**(ii) Exception**

If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this subchapter exceeds \$1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.

**(C) Applicability**

The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this subchapter for fiscal years beginning after September 30, 2014.

**(D) Consideration**

If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 1382(b)(5) of this title into consideration.

(June 30, 1948, ch. 758, title VI, § 603, as added Pub. L. 100-4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 23; amended Pub. L. 113-121, title V, § 5003, June 10, 2014, 128 Stat. 1323.)

AMENDMENTS

2014—Subsec. (c). Pub. L. 113-121, § 5003(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 1292 of this title), (2) for the implementation of a management program established under section 1329 of this title, and (3) for development and implementation of a conservation and management plan under section 1330 of this title. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.”

Subsec. (d)(1)(A). Pub. L. 113-121, § 5003(2)(A)(i), substituted “the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed with the proceeds of the loan” for “20 years”.

Subsec. (d)(1)(B). Pub. L. 113-121, § 5003(2)(A)(ii), substituted “upon the expiration of the term of the loan” for “not later than 20 years after project completion”.

Subsec. (d)(1)(E). Pub. L. 113-121, § 5003(2)(A)(iii)-(v), added subpar. (E).

Subsec. (d)(7). Pub. L. 113-121, § 5003(2)(B), inserted “, \$400,000 per year, or ½ percent per year of the current valuation of the fund, whichever amount is greatest, plus the amount of any fees collected by the State for such purpose regardless of the source” before period at end.

Subsec. (i). Pub. L. 113-121, § 5003(3), added subsec. (i).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-121 effective Oct. 1, 2014, see section 5006 of Pub. L. 113-121, set out as a note under section 1381 of this title.

**§ 1384. Allotment of funds**

**(a) Formula**

Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 1285(c) of this title.

**(b) Reservation of funds for planning**

Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or \$100,000, whichever amount is greater, to carry out planning under sections 1285(j) and 1313(e) of this title.

**(c) Allotment period**

**(1) Period of availability for grant award**

Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

**(2) Reallotment of unobligated funds**

The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under subchapter II of this chapter for the second fiscal

year of such 2-year period. None of the funds reallocated by the Administrator shall be reallocated to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

(June 30, 1948, ch. 758, title VI, §604, as added Pub. L. 100-4, title II, §212(a), Feb. 4, 1987, 101 Stat. 25.)

#### USE OF CAPITALIZATION GRANT FUNDS FOR CONSTRUCTION GRANTS

Pub. L. 101-144, title III, Nov. 9, 1989, 103 Stat. 858, as amended by Pub. L. 101-302, title II, May 25, 1990, 104 Stat. 238, provided: "That, notwithstanding any other provision of law, sums heretofore, herein or hereafter appropriated under this heading ['ENVIRONMENTAL PROTECTION AGENCY' and 'CONSTRUCTION GRANTS'] allotted for title VI [33 U.S.C. 1381 et seq.] capitalization grants to American Samoa, Commonwealth of the Northern Mariana Islands, Guam, the Republic of Palau (or its successor entity), Virgin Islands and the District of Columbia, may be used for title II [33 U.S.C. 1281 et seq.] construction grants at the request of the chief executive of each of the above named entities, and sums appropriated in fiscal year 1989 shall remain available for obligation until September 30, 1992."

### § 1385. Corrective action

#### (a) Notification of noncompliance

If the Administrator determines that a State has not complied with its agreement with the Administrator under section 1382 of this title or any other requirement of this subchapter, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

#### (b) Withholding of payments

If a State does not take corrective action within 60 days after the date a State receives notification of such action under subsection (a) of this section, the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

#### (c) Reallocation of withheld payments

If the Administrator is not satisfied that adequate corrective actions have been taken by the State within 12 months after the State is notified of such actions under subsection (a) of this section, the payments withheld from the State by the Administrator under subsection (b) of this section shall be made available for reallocation in accordance with the most recent formula for allotment of funds under this subchapter.

(June 30, 1948, ch. 758, title VI, §605, as added Pub. L. 100-4, title II, §212(a), Feb. 4, 1987, 101 Stat. 25.)

### § 1386. Audits, reports, and fiscal controls; intended use plan

#### (a) Fiscal control and auditing procedures

Each State electing to establish a water pollution control revolving fund under this subchapter shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for—

- (1) payments received by the fund;

- (2) disbursements made by the fund; and

- (3) fund balances at the beginning and end of the accounting period.

#### (b) Annual Federal audits

The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the water pollution revolving fund established by such State shall be conducted in accordance with the auditing procedures of the Government Accountability Office, including chapter 75 of title 31.

#### (c) Intended use plan

After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to—

- (1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 1296 of this title and a list of activities eligible for assistance under sections 1329 and 1330 of this title;

- (2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

- (3) information on the activities to be supported, including a description of project categories, discharge requirements under subchapters III and IV of this chapter, terms of financial assistance, and communities served;

- (4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 1382(b) of this title; and

- (5) the criteria and method established for the distribution of funds.

#### (d) Annual report

Beginning the first fiscal year after the receipt of payments under this subchapter, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms and similar details on other forms of financial assistance provided from the water pollution control revolving fund.

#### (e) Annual Federal oversight review

The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c) of this section, each State report prepared under subsection (d) of this section, and other such materials as are considered necessary and appropriate in carrying out the purposes of this subchapter. After reasonable notice by the Administrator to the State or the recipient of a loan from a water pollution control revolving fund, the State or loan recipient shall make available to the Administrator such records as the Administrator reasonably re-