

(iii) the cost of replacing the project or activity; and

(14) a contract to be carried out using funds directly made available by a capitalization grant under this subchapter for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

(June 30, 1948, ch. 758, title VI, §602, as added Pub. L. 100-4, title II, §212(a), Feb. 4, 1987, 101 Stat. 22; amended Pub. L. 113-121, title V, §5002, June 10, 2014, 128 Stat. 1322.)

#### AMENDMENTS

2014—Subsec. (b)(6). Pub. L. 113-121, §5002(1), substituted “eligible under this chapter” for “eligible under section 1383(c)(1) of this title”, “with assistance made available by a State water pollution control revolving fund authorized under this subchapter, or section 1285(m) of this title, or both,” for “before fiscal year 1995 with funds directly made available by capitalization grants under this subchapter and section 1285(m) of this title”, and “sections 1371(c)(1)” for “sections 1281(b), 1281(g)(1), 1281(g)(2), 1281(g)(3), 1281(g)(5), 1281(g)(6), 1281(n)(1), 1281(o), 1284(a)(1), 1284(a)(2), 1284(b)(1), 1284(d)(2), 1291, 1298, 1371(c)(1),”.

Subsec. (b)(9). Pub. L. 113-121, §5002(2), substituted “standards, including standards relating to the reporting of infrastructure assets;” for “standards; and”.

Subsec. (b)(11) to (14). Pub. L. 113-121, §5002(3), (4), added pars. (11) to (14).

#### 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.

### § 1383. Water pollution control revolving loan funds

#### (a) Requirements for obligation of grant funds

Before a State may receive a capitalization grant with funds made available under this subchapter and section 1285(m) of this title, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

#### (b) Administration

Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this chapter.

#### (c) Projects and activities eligible for assistance

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 or 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;

(3) for development and implementation of a conservation and management plan under section 1330 of this title;

(4) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(6) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;

(7) for the development and implementation of watershed projects meeting the criteria set forth in section 1274 of this title;

(8) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works;

(9) for reusing or recycling wastewater, stormwater, or subsurface drainage water;

(10) for measures to increase the security of publicly owned treatment works; and

(11) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works—

(A) to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and

(B) to assist such treatment works in achieving compliance with this chapter.

#### (d) Types of assistance

Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

(1) to make loans, on the condition that—

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 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;

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized upon the expiration of the term of the loan;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;

(D) the fund will be credited with all payments of principal and interest on all loans; and

(E) for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall—

(i) develop and implement a fiscal sustainability plan that includes—

(I) an inventory of critical assets that are a part of the treatment works;

(II) an evaluation of the condition and performance of inventoried assets or asset groupings;

(III) a certification that the recipient has evaluated and will be implementing

water and energy conservation efforts as part of the plan; and

(IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or

(ii) certify that the recipient has developed and implemented a plan that meets the requirements under clause (i);

(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on fund accounts; and

(7) for the reasonable costs of administering the fund and conducting activities under this subchapter, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this subchapter, \$400,000 per year, or  $\frac{1}{5}$  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.

**(e) Limitation to prevent double benefits**

If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 1281(g) of this title for construction of such treatment works and an allowance under section 1281(l)(1) of this title for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

**(f) Consistency with planning requirements**

A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 1285(j), 1288, 1313(e), 1329, and 1330 of this title.

**(g) Priority list requirement**

The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 1296 of this title. Such assistance may be provided regardless of the rank of such project on such list.

**(h) Eligibility of non-Federal share of construction grant projects**

A State water pollution control revolving fund may provide assistance (other than under sub-

section (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

**(i) Additional subsidization**

**(1) In general**

In any case in which a State provides assistance to an eligible recipient under subsection (d), the State may provide additional subsidization, including forgiveness of principal and negative interest loans—

(A) in assistance to a municipality or intermunicipal, interstate, or State agency to benefit a municipality that—

(i) meets the affordability criteria of the State established under paragraph (2); or

(ii) does not meet the affordability criteria of the State if the recipient—

(I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;

(II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and

(III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or

(B) to implement a process, material, technique, or technology—

(i) to address water-efficiency goals;

(ii) to address energy-efficiency goals;

(iii) to mitigate stormwater runoff; or

(iv) to encourage sustainable project planning, design, and construction.

**(2) Affordability criteria**

**(A) Establishment**

**(i) In general**

Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a 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 pub-

lic 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; Pub. L. 114-322, title IV, §5012, Dec. 16, 2016, 130 Stat. 1902.)

AMENDMENTS

2016—Subsec. (i)(1). Pub. L. 114-322, §5012(1), substituted “to an eligible recipient” for “to a municipality or intermunicipal, interstate, or State agency” in introductory provisions.

Subsec. (i)(1)(A). Pub. L. 114-322, §5012(2), inserted “in assistance to a municipality or intermunicipal, interstate, or State agency” before “to benefit” in introductory provisions.

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) Reallocation 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 reallocated 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.)