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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 365  
PROCEDURES FOR ISSUING LOANS FROM THE WATER  
POLLUTION CONTROL LOAN PROGRAM

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**AUTHORITY:** Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

**SOURCE:** Adopted at 13 Ill. Reg. 7351, effective May 1, 1989; amended at 16 Ill. Reg. 15073, effective September 21, 1992; recodified at 19 Ill. Reg. 11450, effective August 11, 1995; amended at 20 Ill. Reg. 788, effective January 1, 1996; amended at 30 Ill. Reg. 15590, effective September 18, 2006; emergency amendment at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. 15450, effective October 28, 2009; emergency amendment at 34 Ill. Reg. 8325, effective June 10, 2010, for a maximum of 150 days; emergency expired November 6, 2010; amended at 34 Ill. Reg. 17582, effective November 8, 2010; former Part repealed at 41 Ill. Reg. 7980 and new Part adopted at 41 Ill. Reg. 7983, effective July 1, 2017.

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SUBPART A: INTRODUCTION

**Section 365.105 Purpose**

This Part sets forth procedures to be used by the Agency to operate the Water Pollution Control Loan Program (WPCLP).

**Section 365.110 Definitions**

- a) Unless specified otherwise in subsection (b), all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act (35 Ill. Adm. Code: Subtitle C) and the federal Clean Water Act (CWA), as amended (33 USC 1251 et seq.).
- b) For the purposes of this Part, the following definitions apply:

Act – The Environmental Protection Act [415 ILCS 5].

Addenda – Documents issued by the loan applicant after advertisement for bids, which modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

Agency – *Illinois Environmental Protection Agency*. [415 ILCS 5/19.2(a)]

Binding Commitment – A legal obligation between the Agency and the loan recipient to provide financial assistance from the WPCLP to the loan recipient, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Capitalization Grant – The actual federal funds received by the Agency for deposit into the WPCLP as a result of the capitalization grant agreement with USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and USEPA for the purpose of providing a grant to capitalize the WPCLP and enable the Agency to provide assistance for WPCLP projects.

Change Order – A written order by the loan recipient to the contractor authorizing

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an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Compliance Project – A project that consists of construction, expansion, or upgrading of a treatment works necessary to meet State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle C and the CWA, respectively.

*Construction – Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the treatment works, engineering, architectural, legal, fiscal or economic investigations, or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of treatment works, or the inspection or supervision of any of the foregoing items. [415 ILCS 5/19.2]*

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

CWA – The Clean Water Act, as amended (33 USC 1251 et seq.).

Dedicated Source of Revenue – The type of security and the basis of legal authorization that are dedicated by legislative enactment or other appropriate authority, along with the applicable revenue source pledged for repayment and recorded in an account for the purpose of loan repayment, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal, and engineering tasks, subsequent to Project Plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This must include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems and sewer use ordinances.

Director – Director of the Illinois Environmental Protection Agency.

Energy Efficiency – The use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy

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consumption or produce clean energy used by a treatment works.

**Environmentally Innovative Projects** – Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced cost and projects that foster adaptation of water protection programs and practices to climate change.

**Facilities** – Equipment or operating systems that are constructed, installed or established to serve the particular purpose of mitigating the impacts of sewerage, industrial waste or non-point sources of pollution in a watershed. Facilities may involve stand-alone projects or be involved as component pieces of treatment works. Facilities in the context of the Green Project Reserve will address green infrastructure, water and energy efficiency improvements and other environmentally innovative activities.

**Fixed Loan Rate** – The simple annual fixed rate on the loan, which includes an interest rate portion and a loan support rate portion. The fixed loan rate shall be determined on an annual basis by the procedures defined in Section 365.210.

**Interest Rate** – The interest rate is a portion of the Fixed Loan Rate and shall not be less than one-half of the Fixed Loan Rate rounded to the nearest 0.01%. The monies generated by the interest rate portion of the Fixed Loan Rate shall be deposited in the WPCLP receipt account within the Fund.

**Loan Support Rate** – The loan support rate is a portion of the Fixed Loan Rate and shall not exceed one-half of the Fixed Loan Rate rounded to the nearest 0.01%. The monies generated by the loan support rate portion of the Fixed Loan Rate shall be deposited in the Loan Support Program receipt account within the Fund.

*Fund* – *The Water Revolving Fund* as authorized by Section 19.3 of the Act, consisting of the *Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program*. [415 ILCS 5/19.2(b)]

**Green Infrastructure** – Includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape

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features, such as forests, floodplains and wetlands, coupled with policies that reduce overall imperviousness in a watershed. On a local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements, and cisterns.

Green Project Reserve – The portion of funded projects, as required by the Capitalization Grant, identified by the Agency in its Intended Use Plan and Annual Report that address green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities as directed by federal law.

Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connection, or manholes.

Inflow – Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash water, or drainage.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed, and constructed.

*Intended Use Plan – A plan which includes a description of the short and long term goals and objectives of the Water Pollution Control Loan Program, project categories, discharge requirements, terms of financial assistance and the loan applicants to be served. [415 ILCS 5/19.2(e)]*

Interstate Agency – An agency of two or more states established by or pursuant to an agreement or compact approved by the US Congress, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by USEPA.

Iron and Steel Products – The following products made primarily of iron or steel:

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lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

*Loan – A loan made from the Water Pollution Control Loan Program to an eligible applicant as a result of a contractual agreement between the Agency and such applicant. [415 ILCS 5/19.2(c)]*

**Loan Agreement** – The contractual agreement document between the Agency and the loan recipient that contains the terms and conditions governing the loan issued from the WPCLP.

**Loan Applicant** – The person that has applied for a loan from the WPCLP under this Part.

**Loan Procedures** – The procedures for issuing loans from the WPCLP as set out in this Part.

**Loan Recipient** – The person that has been provided a loan from the WPCLP under this Part.

**Loan Support Rate** – The loan support rate is a portion of the fixed loan rate and shall not exceed one-half of the fixed loan rate rounded to the nearest 0.01%. The monies generated by the loan support rate portion of the fixed loan rate shall be deposited in the Loan Support Program receipt account within the Fund.

*Local Government Unit – A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities, including storm water treatment systems, or public water supply facilities or both. [415 ILCS 5/19.2(g)]*

**Market Interest Rate** – The mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 through June 30 of the preceding year, rounded to the nearest 0.01%.

**Median Household Income or MHI** – The median household income is the American Community Survey 5-year estimate from the United States Department of Commerce, Bureau of the Census.

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**Municipality** – A municipality as defined in section 502 of the federal Clean Water Act (33 USC 1362(4)).

**Operating Agreement** – The agreement between the Agency and USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of the WPCLP.

*Person* – Any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.315]

**Principal** – The total amount of funds distributed to loan recipients for eligible project costs.

**Project** – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

**Project Priority List** – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 366 that the Agency has determined are eligible to receive financial assistance from the WPCLP.

**Public Loan Applicant** – A loan applicant that is a municipality, intermunicipal agency, interstate agency, or local government unit that has applied for a loan under the WPCLP.

**Public Loan Recipient** – A loan recipient that is a municipality, intermunicipal agency, interstate agency, or local government unit that has been provided a loan under the WPCLP.

**Responsible Bid** – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information necessary to demonstrate responsibility may be corrected or submitted after bid opening.

**Responsive Bid** – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the



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contract documents to be complied with at the risk of bid rejection for nonresponsiveness. Bid defects resulting in a nonresponsive bid may not be corrected after the bid opening.

**Service Population** – The number of people served by the public loan applicant.

**Subagreement** – A written agreement between the loan recipient and another party, and any tier of agreement under that written agreement, to furnish services, supplies, or equipment necessary to complete the project for which a loan is provided, including construction contracts, contracts for personal and professional services, and purchase orders.

**Treatment Works** – *Treatment works, as defined in section 212 of the federal Water Pollution Control Act (33 USC 1292), including, but not limited to, the following:*

*any devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances;*

*extensions, improvements, remodeling, additions, and alterations thereof;*

*elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities;*

*any works, including site acquisition of the land that will be an integral part of the treatment process for wastewater facilities; and*

*any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems as those terms are defined in the Federal Water Pollution Control Act. [415 ILCS 5/19.2(f)]*

**Unemployment Rate** – The annual average unemployment rate calculated by the Illinois Department of Employment Security, Economic Information and Analysis Division.

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Useful Life – The estimated period during which a treatment works is intended to be operable, as certified by the project’s consulting licensed professional engineer.

USEPA – The United States Environmental Protection Agency.

User Charge – A charge levied on the users of a treatment works to produce adequate revenues for the operation, maintenance and replacement of the treatment works.

WPCLP – The Water Pollution Control Loan Program as authorized by Section 19.2 of the Act.

#### **Section 365.120 Administration**

- a) The State Water Revolving Fund, an interest-bearing special fund, is administered by the Agency as an instrument of the State of Illinois in accordance with the Capitalization Grant Agreement between the Agency and USEPA in accordance with State and federal laws.
- b) The Capitalization Grant Agreement between the Agency and USEPA contains or incorporates by reference the following:
  - 1) the Operating Agreement between USEPA and the Agency that contains the organization, administrative framework, and procedures of the WPCLP that are not expected to change annually;
  - 2) the Agency’s Intended Use Plan;
  - 3) an agreed upon payment schedule between USEPA and the Agency;
  - 4) the Green Project Reserve requirements;
  - 5) the Agency’s State environmental review process; and
  - 6) the Agency’s agreement to the following:
    - A) to accept grant payments in accordance with a negotiated payment schedule;

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- B) to deposit into the State Water Revolving Fund an amount equaling at least 20% of each grant payment;
- C) to make binding commitments in an amount equal to 120% of each quarterly federal grant payment within one year after the receipt of each quarterly grant payment;
- D) to expend all funds in an expeditious and timely manner;
- E) to first use funds equaling the amount of the grant, all repayments of principal and payments of interest on the initial loans from the grant, and the State match to assure maintenance of progress, as determined by the Governor, toward compliance with enforceable deadlines, goals and requirements of the CWA, including the municipal compliance deadline;
- F) treatment works that will be constructed in whole or in part with assistance from the State Water Revolving Fund will meet the requirements of 33 USC 1371(c)(1) and 1372;
- G) to commit or expend each quarterly grant payment in accordance with State laws and procedures regarding the commitment or expenditure of revenue;
- H) to use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;
- I) to require recipients under WPCLP to maintain projects and accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets;
- J) to make annual reports to the USEPA on the actual use of funds;
- K) to establish, maintain, invest and credit the State Water Revolving Fund with repayments so that the fund balance will be available in perpetuity for activities under the CWA;
- L) to use fees charged by the Agency to the recipients of assistance that are considered as program income for the purpose of financing

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of the cost of administering the WPCLP or financing projects or activities eligible for assistance under this Part;

- M) to an annual audit of the WPCLP in accordance with the auditing procedures of the General Accounting Office (31 USC 75);
  - N) to require public loan recipients to study the cost and effectiveness of the process, materials, techniques, and technologies for carrying out the proposed project or activity and to select, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture and conservation, and energy conservation; and
  - O) to require that contracts carried out with funds directly made available under this Part for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services are negotiated in the same manner as a contract for architectural and engineering services are negotiated under 40 USC 1101.
- c) Intended Use Plan
- 1) After public review and comment, the Agency must annually prepare an Intended Use Plan and submit that plan to USEPA.
  - 2) The Intended Use Plan must include:
    - A) the uses of the State Water Revolving Fund under the WPCLP and describe how these uses support the goals of the WPCLP;
    - B) a listing and description of projects on the Project Priority List to be provided financial assistance and the terms of the financial assistance;
    - C) the short and long term goals and objectives of the WPCLP;
    - D) information on the types of activities including eligible categories of costs to receive assistance, types of assistance to be provided, and the WPCLP policies on setting the terms for various types of assistance provided by the State Water Revolving Fund under this

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Part;

- E) the criteria and the method for distribution of the State Water Revolving Fund funds under this Part; and
- F) assurances and specific proposals on the manner by which the Agency intends to comply with 40 CFR 35.3135(c), (d), (e) and (f), and 35.3140.

**Section 365.130 Projects and Activities Available for Assistance**

Funds available under the WPCLP and this Part shall be used only for providing financial assistance for the following projects or activities:

- a) to any public loan applicant for construction of publicly owned treatment works;
- b) for the implementation of a management program established under 33 USC 1329;
- c) for development and implementation of a conservation and management plan under 33 USC 1330;
- d) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- e) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- f) to any public loan applicant for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- g) for the development and implementation of watershed projects meeting the criteria set forth in 33 USC 1274;
- h) to any public loan applicant for measures to reduce the energy consumption needs for publicly owned treatment works;
- i) for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- j) for measures to increase the security of publicly owned treatment works;

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- k) to any qualified nonprofit entity, as determined by USEPA, to provide assistance to owners and operators of small and medium publicly owned treatment works:
  - 1) to plan, develop, and obtain financing for eligible projects under this subsection (k), including planning, design, and associated preconstruction activities; and
  - 2) to assist the treatment works in achieving compliance with the CWA.

**Section 365.140 Types of Assistance**

Funds distributed from the State Water Revolving Fund under the WPCLP and this Part may only be used as follows:

- a) to make loans, on the condition that:
  - 1) the 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 of the project to be financed with the proceeds of the loan pursuant to Section 365.220;
  - 2) annual principal and interest payments will commence not later than one year after completion of any project and all loans will be fully amortized upon the expiration of the term of the loan;
  - 3) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;
  - 4) the fund will be credited with all payments of principal and interest on all loans; and
  - 5) for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under Section 365.130(a):
    - A) the recipient of a loan shall develop and implement a fiscal sustainability plan that includes:
      - i) an inventory of critical assets that are a part of the treatment works;

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- 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 those activities; or
- B) the loan recipient shall certify that the recipient has developed and implemented a plan that meets the requirements under subsection (a)(5)(A);
- b) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, when the debt obligations were incurred after March 7, 1985;
- c) *to make loans, including, but not limited to, loans through a linked deposit program, at or below market interest rates for the implementation of a management program established under Section 319 of the CWA [415 ILCS 5/19.3(b)(3.5)];*
- d) *to guarantee or purchase insurance for local obligations where such action would improve credit market access or reduce interest rates [415 ILCS 5/19.3(b)(4)];*
- e) *as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Water Revolving Fund [415 ILCS 5/19.3(b)(5)];*
- f) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;
- g) to earn interest on fund accounts; and
- h) *for the reasonable costs of administering the Water Revolving Fund [415 ILCS 5/19.3(b)(6)];*

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- i) to transfer funds to the Public Water Supply Loan Program [415 ILCS 5/19.3(b)(7)]; and
- j) *to provide any other financial assistance that may be provided under Section 603 of the CWA for any other projects or activities eligible for assistance under that Section or federal rules adopted to implement that section [415 ILCS 5/19.3(b)(8)].*

**Section 365.150 Other Federal Requirements**

- a) Loan projects must be consistent with any plans developed under Sections 205(j), 208, 303(e), and 319 of the CWA.
- b) Loan projects must meet disadvantaged business enterprise requirements in accordance with 40 CFR 33.
- c) If a loan recipient receives a loan from the Agency that will finance the cost of project planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, and receives a grant under 33 USC 1281 (g) for construction of those treatment works and an allowance under 33 USC 1281 (l)(1) for non-federal funds expended for that planning and preparation, the loan recipient must promptly repay the loan to the extent of the allowance.
- d) The Agency may provide assistance (other than under Section 365.140 (a)) to a public loan recipient with respect to the non-federal share of the costs of a treatment works project for which the public loan recipient is receiving assistance from USEPA under any other authority only if that assistance is necessary to allow the project to proceed.
- e) Loan projects must meet the applicable requirements of any other federal laws and authorities.

**Section 365.160 Application Process**

- a) In order to receive a loan under the WPCLP, loan applicants must apply with the Agency using the loan application process outlined in Subpart C. The process requires that:



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- 1) the loan applicant submits a Funding Nomination Form pursuant to Section 365.310;
  - 2) the loan applicant submits a Project Plan pursuant to Section 365.320;
  - 3) the project undergoes State environmental review under Section 365.330;
  - 4) the project be placed on the Project Priority List pursuant to Section 365.340; and
  - 5) the loan applicant secures the loan agreement pursuant to Section 365.350.
- b) Loan applicants shall not execute a notice to proceed until the loan agreement has been fully secured and executed.

**Section 365.170 Waiver of Procedures**

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan recipient, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce a recipient's ability to repay the loan to the Agency, or will not, in general, weaken the financial position of the WPCLP. The waiver may be subject to such additional conditions as the Director deems necessary.
- b) In addition to all federal requirements, these procedures will not be waived:
  - 1) Section 365.150 (Other Federal Requirements);
  - 2) Section 365.210 (Fixed Loan Rate);
  - 3) Section 365.240 (Restructuring);
  - 4) Section 365.320 (Project Plan);
  - 5) Section 365.330 (State Environmental Review);
  - 6) Section 365.340 (Project Priority List);

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- 7) Section 365.350(a)(10) (Ability to Repay);
- 8) Section 365.460(a)(3) (Operation and Maintenance of the Project);
- 9) Section 365.470 (Ongoing Auditing and Monitoring of Financial Capability);
- 10) Section 365.620(a)(3) (Wage Provisions);
- 11) Section 365.620(a)(4) (Disadvantaged Business Enterprise Requirements);
- 12) Section 365.620(a)(5) (Debarment and Suspension Certification);
- 13) Section 365.630(a)(1) (Disadvantaged Business Enterprise Requirements);  
and
- 14) Section 365.630(a)(4) (Debarment and Suspension Certification).

SUBPART B: FINANCING TERMS

**Section 365.210 Fixed Loan Rate**

The interest rate of the loan agreement shall be a fixed loan rate and shall be established as follows:

- a) Base 20 Year Rate – Loan agreements with a repayment period not to exceed 20 years shall have a fixed loan rate equal to 50% of the market interest rate (mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 through June 30 of the preceding State fiscal year rounded to the nearest 0.01%).
- b) Small Community Rate – Public loan applicants with a service population less than 25,000 that also meet any one of the following three criteria qualify for a fixed loan rate equal to 75% of the Base 20 Year Rate:
  - 1) The median household income of the public loan applicant's service population is less than the statewide average.
  - 2) The unemployment rate of the public loan applicant's service population is greater than the statewide average.

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- 3) The public loan applicant's annual user charge, based upon the average monthly bill of the public loan applicant's residential customers, is greater than 1.0% of the median household income of the public loan applicant's service population.
- c) Hardship Rate – Public loan applicants with a service population less than 10,000 that also meet any one of the following three criteria qualify for a fixed loan rate of 1.0%:
- 1) The median household income of the public loan applicant's service population is below 70% of the statewide average.
  - 2) The unemployment rate of the public loan applicant's service population is at least 3.0% greater than the statewide average.
  - 3) The public loan applicant's annual user charge, based upon the average monthly bill of the public loan applicant's residential customers, is greater than 1.5% of the median household income of the public loan applicant's service population.
- d) Environmental Impact Discount – When at least 50% of the eligible project costs fund any of the following components, the loan applicant shall receive a 0.2% discount from the rates established in subsection (a), (b), or (c):
- 1) new projects for the collection or treatment of unsewered communities;
  - 2) projects involving nutrient removal or nutrient loss reduction;
  - 3) green infrastructure projects;
  - 4) projects lowering water demand; or
  - 5) projects reducing energy demands at a wastewater treatment facility.

**Section 365.220 Loan Repayment Period**

- a) Except as provided in subsections (b) and (c), the loan repayment period cannot exceed the lesser of 20 years beyond the initiation of operation date, 20 years beyond the initiation of the loan repayment period, or the projected useful life of the project to be financed with proceeds of the loan.

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- b) For public loan applicants that qualify for the Small Community Rate or Hardship Rate as defined in Section 365.210, the loan repayment period cannot exceed the lesser of 30 years beyond the initiation of operation date, 30 years beyond the initiation of the loan repayment period, or the projected useful life of the project to be financed with proceeds of the loan.
- c) The Agency may require a loan repayment period term of less than the maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.

**Section 365.240 Restructuring**

All restructuring shall be consistent with the objectives of the CWA and shall meet the requirements of this Part.

- a) A written request for the restructuring of the loan obligation must be submitted in writing to the Agency. Each written request for restructuring shall contain all of the following:
  - 1) The name of the applicant and the Agency loan number;
  - 2) A statement explaining when it was determined that restructuring was needed;
  - 3) A statement explaining all remedial measures taken prior to the determination that restructuring was needed;
  - 4) A statement explaining why restructuring is in the best interest of the State and the applicant;
  - 5) A description of the financing terms desired and the facts that the applicant believes warrant the Agency's approval of the restructuring; and
  - 6) A description of the applicant's financial capability and dedicated source of revenue for repayment of the restructured loan in accordance with Section 365.350(a)(9) through (a)(13).
- b) The applicant must resubmit all financial and managerial capability

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documentation required under Section 365.350(a)(9) through (a)(13), and the restructured loan must further meet all other requirements of this Part.

- c) The Agency will approve restructuring based on financial and economic considerations that may include, but are not limited to, the following:
  - 1) good cause;
  - 2) circumstances beyond the control of the applicant; and
  - 3) the financial hardship the existing loan imposes on the loan recipient.
- d) Restructured loan agreements shall have a fixed loan rate equal to the lesser of the fixed loan rate in the original loan agreement or the current appropriate fixed loan rate under Section 365.210.
- e) Except as provided in subsection (f), the loan repayment period for a restructured loan cannot exceed the lesser of 20 years beyond the initiation of operation date, 20 years beyond the initiation of the loan repayment period established by the original loan agreement, or the projected useful life of the project to be financed with proceeds of the original loan.
- f) For public loan applicants that qualify for the Small Community Rate or Hardship Rate as provided in Section 365.210, the loan repayment period for a restructured loan cannot exceed the lesser of 30 years beyond the initiation of operation date, 30 years beyond the initiation of the loan repayment period established by the original loan agreement, or the projected useful life of the project to be financed with proceeds of the original loan.

**Section 365.250 Principal Forgiveness**

- a) When the Agency provides assistance to a public loan recipient, the Agency shall, until the available principal forgiveness funding established in the Capitalization Grant is exhausted, provide additional subsidization in the form of principal forgiveness to a public loan recipient to finance a project or activity eligible for assistance under 33 USC 1383(c)(1) that meets the affordability criteria of subsection (b).
- b) Affordability Criteria:

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- 1) In order to qualify for principal forgiveness under subsection (a), a public loan recipient must meet the following requirements:
- A) A service population of 30,000 or less, unless the loan applicant's median household income (MHI) is 70%, or less, of the statewide average;
  - B) The MHI of the public loan applicant's service population is less than or equal to the statewide MHI; and
  - C) Score at least 21 points based on the following criteria:
    - i) Median Household Income

<b>Points</b>	<b>MHI as % of Statewide MHI</b>
0	Above 100%
5	95-99.99%
10	90-94.99%
15	85-89.99%
20	80-84.99%
25	75-79.99%
30	70-74.99%
35	65-69.99%
40	60-64.99%
45	55-59.99%
50	50-54.99%
55	45-49.99%
60	0-44.99%

- ii) Population

<b>Points</b>	<b>Service Population</b>
5	20,000-30,000
10	15,000-19,999

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15	10,000-14,999
20	5,000-9,999
25	2,000-4,999
30	1,000-1,999
35	0-999

iii) Additional Criteria

Points	Additional Criteria
1	Unemployment rate is greater than the statewide average unemployment rate by one percentage point or more
4	Decrease in service population greater than 5.0% in the last 5 years from the date of the loan application

- 2) The amount of principal forgiveness under subsection (a) will be capped for qualifying public loan recipients and applied only to eligible projects costs as follows:

Points	Percent
0-20	0%
21-40	up to 15%
41-60	up to 30%
61-80	up to 45%
81-100	up to 60%

- c) Notwithstanding the principal forgiveness caps in subsection (b)(2), the Agency may establish a base cap applicable to each public loan recipient within its Intended Use Plan each year. The base cap shall be the same amount for each public loan recipient receiving principal forgiveness. In determining the base cap, the Agency must consider the following factors:

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- 1) the amount of federal appropriation allocated to the Agency for principal forgiveness;
  - 2) the number of qualifying public loan recipients;
  - 3) the availability of equity in the State Water Revolving Fund while ensuring the fund operates in perpetuity; and
  - 4) requirements established by USEPA.
- d) The Agency shall award principal forgiveness to loan applicants in the order that loan applicants have been issued a loan by the Agency pursuant to Section 365.410.

#### **Section 365.260 Limitations on Loan Assistance**

The Agency may establish the annual limitations on the amount of loan assistance given to each loan recipient by considering the status of the Fund, capitalization grant amounts, economic conditions, and requirements established by USEPA. The annual limitations on the amount of loan assistance established by the Agency must be included as part of the Agency's Intended Use Plan.

#### SUBPART C: LOAN APPLICATION PROCESS

#### **Section 365.310 Funding Nomination Form**

- a) Every loan applicant must submit to the Agency a signed and dated funding nomination on Agency prescribed forms that include, at a minimum, the following items:
- 1) Loan applicant information
    - A) name;
    - B) contact information; and
    - C) authorized representative – name and title;
  - 2) Project Information



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- A) project description;
  - B) cost; and
  - C) project implementation schedule.
- b) To ensure placement on the annual Project Priority List, loan applicants seeking financial assistance during any fiscal year commencing July 1 must annually submit a Funding Nomination Form required under subsection (a) by the preceding January 31.
- c) The first submittal of the Funding Nomination Form must be submitted with a Project Plan as described in Section 365.320.

**Section 365.320 Project Plan**

- a) Loan applicants shall submit to the Agency a Project Plan, with its initial Funding Nomination Form, that shall consist of plans and studies that are directly related to the construction or implementation of the proposed project. The Project Plan shall provide documentation on the need for the project for which loan assistance is being requested.
- b) Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable. If any information required to be furnished as part of a Project Plan has been developed separately, it shall be furnished and incorporated by reference in the Project Plan.
- c) When applicable, the loan applicant shall also submit drafts of any intergovernmental agreements or demonstrations of legal authority necessary for project implementation.
- d) The Project Plan may include more than one construction project.
- e) The Project Plan shall include the following supporting data:
  - 1) A complete description of the selected wastewater treatment system or other systems, identification of any existing violations of federal or State regulations, and identification of the needs to be addressed by the proposed project;

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- 2) A discussion of the technical, financial, managerial, and environmental considerations that form the basis for the loan applicant's selection of the recommended project, including an evaluation regarding the elimination of infiltration and inflow if applicable. When appropriate to the project scope, the following issues shall be addressed:
  - A) The relationship of the capacity of the selected alternative to the needs to be served, including reserve capacity;
  - B) Identification of current and proposed effluent discharge limitations and water quality standards for the proposed treatment works or facilities, as required by Title IV of the CWA and 35 Ill. Adm. Code: Subtitle C;
  - C) A discussion of the operational requirements for the selected alternative and provisions for the ultimate disposal of sludge materials from the wastewater treatment process;
  - D) An inventory of the relative environmental impacts of the selected alternative and a discussion of the measures that would be required during design and construction to mitigate or minimize negative environmental impacts; and
  - E) Adequate basis of design information for the selected alternative to confirm the reasonability of cost estimates;
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch site map or maps locating areas of construction and indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate that the project proposed will be designed in accordance with 35 Ill. Adm. Code 370;
- 4) Any required comments or approvals from relevant federal, State, interstate, regional or local agencies;
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the

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project and repayment of the proposed loan amount, as well as the impact of these costs on the system users; and

- 6) Information sufficient to support a determination as to whether any portion of the project addresses green infrastructure, energy efficient improvements, or other environmentally innovative activities.
- f) Planning for Individual Systems
  - 1) Construction involving privately owned residential wastewater treatment works must be part of the cost-effective solution in the approved Project Plan.
  - 2) Loan applicants must have legal authority to access all such privately owned systems at all reasonable times for such purposes as inspections, monitoring, building, operation, maintenance, rehabilitation, and replacement.
- g) The Project Plan will be reviewed by the Agency under the State environmental review process specified in Section 365.330. If substantial changes are made to the project scope following submittal to the Agency, the Project Plan shall be revised or amended and resubmitted for review and approval.
- h) In the Project Plan, a public loan applicant must certify:
  - 1) it has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought; and
  - 2) it has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:
    - A) the cost of constructing the project or activity;
    - B) the cost of operating and maintaining the project or activity over the life of the project or activity; and
    - C) the cost of replacing the project or activity.

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**Section 365.330 State Environmental Review**

- a) Preliminary Environmental Review
  - 1) All loan applicants shall submit an environmental checklist on forms prescribed by the Agency.
  - 2) Prior to making a final determination on the acceptability of any project plan, the Agency shall undertake a preliminary environmental review of the project to determine whether the project qualifies for a categorical exclusion under subsection (b) or a detailed environmental review under subsection (c).
  - 3) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall project planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains, and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction and ensure that all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- b) Categorical Exclusion

The Agency may categorically exclude certain classes of projects from a detailed environmental review and public hearing requirement when, by virtue of their limited scope, the projects have no potential for negative environmental impacts. For projects categorically excluded from further environmental review process, the Agency shall provide to the applicant a Categorical Exclusion document summarizing the project. The applicant shall publish a notice and provide public access to the planning documents and the Categorical Exclusion document, allowing 10 days for written public comment. If no objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the Project Plan. Should concerns be raised over potential environmental impacts, the Agency may proceed with a detailed environmental review under subsection (c) or issue a conditional approval under which the applicant shall incorporate mitigating measures that would resolve the environmental concerns.
- c) Detailed Environmental Review

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For all projects for which the Agency determines there is a potential for negative environmental impacts, the Agency will prepare a written Preliminary Environmental Impacts Determination (PEID) document summarizing the project and potential environmental impacts. The public will be given an opportunity to comment on the project plan and the PEID.

- 1) The Agency must send the PEID to the loan applicant and other interested parties, inviting public comment. The loan applicant shall hold a public hearing on the project plan and the Agency's PEID for the purpose of obtaining public comment. The public hearing shall be held after the Agency sends the PEID. The loan applicant shall allow an additional 10 days from the date of the public hearing for the submission of written comments from the public.
- 2) The time and place of the public hearing shall be announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- 3) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the project plan made in response to comments.
- 4) Upon receipt of the public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
  - A) An unconditional approval of the plan (original or as amended);
  - B) A conditional approval of the plan with special conditions;
  - C) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigation measures have not been identified; or
  - D) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4331). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.

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- d) Agency approval of a project plan shall be valid for purposes of loan funding for a period of 5 years, after which time the plan shall be updated and resubmitted to the Agency for review and approval. The Agency must prepare a revised environmental review and provide an opportunity for public comment.
- e) At any time within 5 years from the date of project plan approval, the Agency may rescind its approval and require the plan to be amended, if there are changes to the scope of proposed construction or significant alterations to planning area conditions or underlying assumptions that might alter previous conclusions regarding environmental impacts or cost analyses. For projects in which the amended planning would result in substantial changes in environmental or economic impacts, the Agency may require the applicant to provide an opportunity for public comment prior to granting approval of the amended plan.

**Section 365.340 Project Priority List**

- a) The Agency shall not provide financial assistance from the State Water Revolving Fund under this Part to projects that are not on the Agency's Project Priority List.
- b) The Agency shall develop a Project Priority List for each fiscal year beginning on July 1 as follows:
  - 1) Projects that have submitted a Funding Nomination Form and Project Plan pursuant to Sections 365.310 and 365.320, and obtained Project Plan approval pursuant to Section 365.330 by January 31 of the previous fiscal year, will be scored, ranked, and placed on the Project Priority List according to 35 Ill. Adm. Code 366.
  - 2) Projects that submit a Funding Nomination Form and Project Plan pursuant to Sections 365.310 and 365.320 by January 31 of the previous fiscal year, but that have not obtained Project Plan approval, will be placed on the Project Priority List below those scored and ranked pursuant to subsection (b)(1).
  - 3) Projects that have submitted a Funding Nomination Form and Project Plan pursuant to Sections 365.310 and 365.320 after January 31 of the previous fiscal year will be placed on the Project Priority List after obtaining Project Plan approval pursuant to Section 365.330, but will not be placed on the Intended Funding List.

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- c) The Agency shall publish the Project Priority List in the Intended Use Plan.
- d) Intended Funding List
  - 1) The Agency shall identify the Intended Funding List in the Intended Use Plan. The Intended Funding List is comprised of the highest ranking projects on the Project Priority List, with the total costs of all projects equaling the total amount of funds available.
  - 2) Projects on the Intended Funding List are afforded priority of resources, including, but not limited to, preference in securing a loan as soon as the necessary programmatic and financial steps are completed.
  - 3) Projects on the Intended Funding List are not guaranteed funding.
  - 4) Projects not on the Intended Funding List may receive funding in advance of those projects identified in the Intended Funding List when the bypass process criteria are met (see subsection (e)).
  - 5) From July 1 through December 31, only projects on the Intended Funding List will be given a loan.
- e) Bypass Process
  - 1) From January 1 through June 30 of each year, a project on the Intended Funding List may be bypassed when the loan applicant has not:
    - A) submitted a loan application as required by Section 365.350(a);
    - B) submitted all financial capability and dedicated source of revenue information for repayment of the loan required by Section 365.350(a)(9) through (a)(13);
    - C) obtained all necessary construction permits; and
    - D) established a bid opening date prior to March 1.
  - 2) When a project is bypassed, the Agency will make the bypassed funds available for projects on the Project Priority List in the order in which the requirements of Section 365.410(a) are satisfied by the loan applicant.

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**Section 365.350 Securing the Loan Agreement**

After the Agency has approved the loan applicant's Project Plan, the loan applicant shall submit the following documents:

- a) An application, on forms prescribed by the Agency, which must include the following documents:
  - 1) Loan Program Certifications;
  - 2) Certification Regarding Debarment, Suspension and Other Responsibility Matters;
  - 3) Certification of Intent Regarding National Flood Insurance;
  - 4) Certification Regarding Project Site, Rights-of-Way, Easements and Permits;
  - 5) Authorization of a Representative to Sign Loan Documents;
  - 6) An Engineering Service Procurement Report that certifies whether the contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services were negotiated in the same manner as a contract for architectural and engineering services under 40 USC 1101 et seq.;
  - 7) For a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under Section 365.130(a), the public loan recipient shall certify in writing that the public loan recipient will develop and implement a fiscal sustainability plan that includes:
    - A) an inventory of critical assets that are a part of the treatment works;
    - B) an evaluation of the condition and performance of inventoried assets or asset groupings;
    - C) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the



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plan; and

- D) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding the activities;
- 8) Any other executed legal agreements, including, but not limited to, intergovernmental agreements necessary for project implementation;
- 9) Proof of authority to incur debt for:
  - A) Public loan applicants: a certified copy of the enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency, and proof the ordinance was adopted in accordance with State law, including publication and notice requirements when applicable; or
  - B) Loan applicants that are not public loan applicants: documents such as, but not limited to, a copy of board resolutions to incur the debt, Articles of Incorporation, By-laws, Partnership Agreements, or a legal opinion stating that the loan applicant has the authority to incur debt;
- 10) Documentation to support the loan applicant's ability to repay all principal and interest of the loan:
  - A) A financial capability demonstration shall be submitted to the Agency for approval and shall contain:
    - i) detailed project costs;
    - ii) 5 year projected estimates of revenues;
    - iii) 5 year projected estimates of operation and maintenance costs;
    - iv) 5 year projected estimates of local capital costs; and
    - v) the most recent completed annual audited financial statements of the loan applicant;

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- B) A user charge system, when a user charge system is the dedicated source of revenue, shall be submitted to the Agency and shall:
- i) be enacted and enforceable before the first loan disbursement (when applicable, approval of the rate increase by the Illinois Commerce Commission will be required);
  - ii) generate sufficient revenue to offset the cost for operation, maintenance and replacement required to be provided by the loan recipient for all projects authorized under this Part;
  - iii) be incorporated in one or more municipal legislative enactments or other appropriate authorizations. If the project is for a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving wastewater treatment services from the loan recipient shall have adopted user charge systems. The user charge systems shall also be incorporated in the appropriate municipal legislative enactments, intergovernmental or service agreements or other appropriate authorizations; and
  - iv) provide the average monthly cost of service for a residential customer based upon the average monthly water usage for a residential customer, or the appropriate average monthly residential cost of service based upon the methodology established within the loan applicant's system of user charges. If the loan applicant has substantial industrial and/or commercial customers, the loan applicant must provide similar monthly user charge information for the customers within those rate classes. In addition, provide the number of billed residential and industrial or commercial accounts;
- C) A dedicated source of revenue adequate to make loan repayments for the term of the loan. If the dedicated source of revenue is pledged in a subordinate position, the loan applicant must establish a reserve account that provides the Agency with the equivalent coverage and reserves as the senior lien holders. At a minimum,

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the reserve account shall be equal to the annual principal and interest payment funded within 2 years after the loan award;

- D) For nonpublic loan applicants, appropriate legal documents will be provided to enable the Agency to perfect its security interest in the revenues of the loan applicant and other personal properties offered as security by filing the necessary information under the Uniform Commercial Code [810 ILCS 5];
  - E) For nonpublic loan applicants, approval from the Illinois Commerce Commission to incur debt, if applicable;
  - F) Upon request by the Agency, any other documentation necessary to demonstrate the loan applicant's ability to repay all principal and interest of the loan including, but not limited to, a credit report;
- 11) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, bonds or ordinances;
  - 12) A Tax Exemption Certificate and Agreement; and
  - 13) A project completion schedule.
- b) An executed contract for design and construction related work in accordance with Section 365.630 if financing is being requested for these specific costs.
  - c) Design documents, including plans and specifications, for purposes of obtaining a construction permit, or "authorization to construct", from the Agency, pursuant to 35 Ill. Adm. Code 309.154 and 309.202, whichever is applicable.
  - d) A certification of plans and specifications on a form prescribed by the Agency. The certification must be submitted prior to advertising for bids and must be accompanied by all bidding documents and specifications that shall include:
    - 1) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (drawings and specifications may be made available for inspection instead of being furnished);

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- 2) The terms and conditions of the contract to be awarded;
- 3) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
- 4) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
- 5) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient;
- 6) A proposal form, to be used by all bidders, that includes the following language:
  - A) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid certifies as to his or her own organization, that in connection with the bid:
    - i) the prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
    - ii) unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
    - iii) no attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E-11 of the Illinois Criminal Code of 2012 [720 ILCS 5/33E-11];
  - B) Each person signing the bid shall certify that:

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- i) he or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (d)(6)(A); or
  - ii) he or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (d)(6)(A), and as the bidder's agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (d)(6)(A); and
- 7) A requirement that the project will be awarded to the lowest, responsive, responsible bidder in accordance with the following:
- A) after bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award, and the loan applicant's letter of intent to award or the official minutes of board approval;
  - B) the loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency; and
  - C) if the award is intended to be made to a firm that did not submit the lowest bid, prior to any award the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- e) After the bids are opened and evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents, a bidding certification, on forms prescribed by the Agency, and all supporting information from the selected bidder, including, but not limited to, the following:

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- 1) A copy of the published bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the following:
  - A) procedures in this Part;
  - B) the Davis-Bacon Act (40 USC 3141 through 3148) as defined by the US Department of Labor;
  - C) the Employment of Illinois Workers on Public Works Act [30 ILCS 570];
  - D) the use of American Iron and Steel, if required by USEPA for that fiscal year;
  - E) the Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs (40 CFR 33); and
  - F) all controlling federal and State executive orders;
- 2) The bid tabulations and selected bidder's proposal, along with any addenda issued by the loan applicant, if applicable;
- 3) An analysis of the bids and recommendations for the award of the bids;
- 4) A copy of the applicant's notice of intent to award;
- 5) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33;
- 6) A copy of the selected bidder's certification that no funds made available by the WPCLP will be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. This requirement shall not apply in any case or category of cases in which the Administrator of the USEPA finds that:
  - A) applying subsection (e)(6) would be inconsistent with the public interest;

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- B) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - C) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent; and
- 7) Certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements, certifications and other legal documents required by State and federal law.

SUBPART D: LOAN ISSUANCE, AUDITING, AND RECORDKEEPING

**Section 365.410 Loan Issuance**

- a) The Agency may, subject to the availability of funds, issue a loan agreement authorizing the initiation of construction of a project or activity listed in Section 365.130 when:
  - 1) the loan applicant has demonstrated it will comply with the conditions listed in Section 365.140(a);
  - 2) the loan applicant submitted a Funding Nomination Form and the project is on the Project Priority List;
  - 3) the Agency has approved the loan applicant's Project Plan pursuant to Section 365.320; and
  - 4) the documents required by Section 365.350 have been submitted and approved by the Agency.
- b) Any ordinance authorizing the loan recipient entry into a loan agreement or dedicating a source of revenue shall not be amended or superseded substantively or materially without the prior written consent of the Agency.
- c) Annual principal and interest payments will commence not later than one year after completion of any project, and all loans will be fully amortized upon the expiration of the term of the loan. For purposes of this subsection (c), the completion date is the same as the initiation of operation date.

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- d) The Agency and its designated representatives shall have access, during normal business hours and at any other time during which work is being performed, to the premises where any portion of the work for which the WPCLP loan was provided is being performed.

**Section 365.420 Post-Loan Issuance Construction Contract Requirements**

- a) The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms to the approved plans and specifications.
- b) The following procedures shall apply to construction contracts awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.
  - 1) Executed Contract Certification. For each construction contract awarded, the loan recipient shall submit an executed contract certification on forms provided by the Agency.
  - 2) Change Orders
    - A) When the loan recipient authorizes the contractor to add, delete, or revise the work within the general scope of the contract documents, or authorizes an adjustment in the contract price or contract time, the loan recipient shall submit a change order to the Agency.
    - B) For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
      - i) one copy of the fully executed change order signed by the loan recipient, construction engineer, and the contractor; and
      - ii) a description of any changes, with justification for the changes.
    - C) Prior approval by the Agency of a change order is required when a change order results in:



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- i) alterations in design scope that require a modification to a construction permit; or
  - ii) an increase in the amount of loan funds needed to complete the project.
- D) Failure to give timely notice of proposed project changes or action by the loan recipient that is not consistent with the Agency's determination on those changes may result in disallowance of loan participation for costs incurred that are attributable to the change.

**Section 365.430 Loan Eligible Costs**

The loan recipient shall be paid, upon request, in accordance with Section 365.440, for all costs within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be eligible in accordance with the following criteria:

- a) Eligible project costs include all reasonable and necessary costs directly attributable to the project's planning, design, or construction that are not otherwise excluded by this Part. Categories of necessary costs include, but are not limited to, the following:
  - 1) The direct purchase of materials, equipment, and personal services not under the approved construction contract necessary for the completion of a loan funded project;
  - 2) Professional and consultant services contracts necessary for planning, design, bidding, and construction of a loan funded project, except as elsewhere limited by this Part;
  - 3) Costs under approved construction contracts;
  - 4) Costs for premiums for required flood insurance during the project construction period; and
  - 5) Costs under a construction contract executed prior to the award of the loan agreement only when the following conditions apply:
    - A) The loan applicant has received written approval from the Agency

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prior to the award of the construction contract;

- B) The project meets the definition of a compliance project in accordance with Section 365.110; and
  - C) The project costs in subsection (a)(5)(B) were incurred and construction was initiated after March 7, 1985.
- b) Ineligible project costs include, but are not limited to, the following:
- 1) Cost for basin or areawide planning other than facilities planning; and
  - 2) Costs outside the scope of the approved Project Plan.

**Section 365.440 Disbursement of Loan Funds**

- a) Before the Agency will disburse loan funds, the loan recipient shall submit the following:
  - 1) A complete payment request based on costs incurred that are due and payable, as evidenced by invoices;
  - 2) A certification that the contractor is paying prevailing wages in accordance with the Davis-Bacon Act (40 USC 3141 through 3148), as defined by the US Department of Labor; and
  - 3) Enacted and enforceable system of user charges if not previously provided.
- b) Disbursements are subject to the appropriation of funds by the General Assembly.
- c) Disbursements shall be processed in accordance with the loan agreement.
- d) The Agency may withhold any disbursement for a violation of the loan agreement conditions.
- e) The loan recipient shall make prompt payment to the contractor.
- f) The State share of any refunds, rebates, credits, or other amounts (including any interest) accruing to or received by the loan recipient with respect to the project

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that are properly allocable to costs for which loan funds have been disbursed must be paid, minus any reasonable expenses incurred in securing these funds, to the State of Illinois for deposit in the WPCLP.

- g) Any use of loan funds inconsistent with this Part shall result in repayment of those loan funds to the State of Illinois for deposit into the WPCLP receipt account within the Fund.
- h) The loan recipient shall agree to pay the ineligible costs associated with the project, as well as all eligible costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.

#### **Section 365.450 Initiation of Loan Repayment**

Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

- a) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semiannually unless the Agency determines that the dedicated source of revenue justifies an alternative repayment plan.
- b) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- c) The final repayment schedule shall be established as set forth in Section 365.460(b).

#### **Section 365.460 Loan Closing and Issuance of Final Loan Amendment**

- a) The Agency shall conduct a project review to insure that all applicable loan conditions have been satisfied. After the final loan disbursement has been made and the project is complete, the loan recipient shall initiate the loan closing process by submitting the following to the Agency:
  - 1) A release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the

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project work or under the loan, subject only to exceptions specified in the release.

- 2) A final waiver from the contractor and a Certification of Payment that all bills have been paid.
- 3) The Certificate Regarding O & M, on forms prescribed by the Agency that certifies the following:
  - A) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project has been provided.
  - B) An operation and maintenance reference library is available and includes, but is not limited to, the following:
    - i) Manufacturer's literature, shop drawings, and warranties;
    - ii) The plans of record with valve indices for the equipment and process units included in the project. For mechanical wastewater treatment plants, the valve index shall include a listing of valve positions for each possible alternate flow configuration including by-passing of individual treatment processes and units and recommended configurations for emergency conditions that could reasonably be expected to occur; and
  - C) That the loan applicant employs or contracts the services of a certified operator pursuant to 35 Ill. Adm. Code 380.
- 4) If the loan project includes insurable structures that will be located within a designated floodplain area as defined in the National Flood Insurance Act of 1968 (42 USC 4001-4127), written evidence that the loan recipient is participating in the National Flood Insurance Program or that construction areas have received official exclusion from the flood insurance requirements by the Federal Emergency Management Agency.
  - A) The loan recipient (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain

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the insurance for the entire useful life of the insurable structures.

- B) The amount of insurance required shall be the lesser of the total project cost, excluding facilities that are uninsurable under the National Flood Insurance Program, or the maximum limit of coverage made available to the loan recipient under the National Flood Insurance Act of 1968.
  - C) The required insurance premium for the period of construction under this subsection (a)(4) shall be for an eligible project cost under Section 365.430 (Loan Eligible Costs).
- 5) For a treatment works proposed for repair, replacement, or expansion that is eligible for assistance under Section 365.130(a), the public loan recipient shall certify in writing that the public loan recipient has developed and implemented a fiscal sustainability plan that includes:
- A) an inventory of critical assets that are a part of the treatment works;
  - B) an evaluation of the condition and performance of inventoried assets or asset groupings;
  - C) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
  - D) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding those activities.
- 6) Within 30 days after completion of project construction, the loan recipient shall submit, in writing to the Agency, the final change order, along with the contractor's final costs, and the plans of record. After receipt, the Agency may schedule a final onsite inspection provided that all necessary change orders have been submitted and approved.
- b) After the loan recipient has submitted all the loan closing documents in subsection (a), the Agency shall:
- 1) review and determine the final total and eligible costs;

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- 2) establish a final amortization schedule; and
  - 3) issue the loan recipient a final loan amendment.
- c) After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Sections 365.410(d), 365.470, and 365.820 to the project site during normal business hours, to the full extent of the loan recipient's right to access.

**Section 365.470 Ongoing Auditing and Monitoring of Financial Capability**

- a) The loan recipient shall maintain books, records, documents, reports, and other evidentiary material in accordance with generally accepted accounting principles and shall be subject to inspection and audit by the Agency or its authorized representative.
- b) For purposes of this Section, records shall include, but not be limited to, the following:
  - 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial assistance and any matching share or cost sharing; and
  - 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
  - 1) for all costs associated with design and construction, for 3 years after final loan closing;
  - 2) for all other accounting records concerning the loan, for 3 years from the date of the transaction; and
  - 3) for any longer period required by law or by subsections (d) and (e).
- d) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any

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resulting final termination settlement.

- e) Records that relate to appeals in Section 365.650, litigation or the settlement of claims arising out of the performance of the WPCLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims, or exceptions have been completed.
- f) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- g) The Agency or its authorized representative shall have access to all books, documents, papers, and records of the loan recipient for the purpose of making audit, examination, excerpts, and transcriptions in order to ensure compliance with Section 365.350(a)(9) through (a)(13) and Section 365.470(k).
- h) The Agency will monitor all outstanding loans and the financial capability of the loan recipient on an ongoing basis. Upon request of the Agency, loan recipients shall submit additional documentation to support the loan applicant's ongoing ability to repay the loan pursuant to Section 365.350(a)(9) through (a)(13).
- i) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency of all proposed changes to the dedicated source of revenue.
- j) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (f) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations, and other requirements of the loan agreement. The Agency's review shall be based on, but is not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue, and is otherwise in accordance with this Part.
- k) The loan recipient shall review user charges annually and revise the rates periodically to reflect actual treatment works operation, maintenance, and replacement costs. The Agency may request a report on the status of the user charge system including projected costs, actual costs, revenue generated, and fund balances at any time.

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- l) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to reexamine the dedicated revenue source and restructure it as necessary.
- m) The loan recipient shall comply with the audit requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Rules (2 CFR 200.Subpart F).

SUBPART E: DELINQUENT LOAN REPAYMENTS AND NONCOMPLIANCE

**Section 365.510 Delinquent Loan Repayments**

- a) *In the event that a timely payment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days after the payment due date. The notification shall include a statement of the reasons the payment was not timely tendered, the circumstances under which the late payments will be satisfied, and binding commitments to assure future payments. After receipt of this notification, the Agency shall confirm in writing the acceptability of the plan or take action in accordance with subsection (b) of this Section.*
- b) *In the event that a loan recipient fails to comply with subsection (a) of this Section, the Agency shall promptly issue a notice of delinquency to the loan recipient which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations or take other specified actions as may be appropriate to remedy the delinquency and to assure future payments.*
- c) *In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet its obligations made pursuant to subsections (a) and (b) of this Section, the Agency shall pursue the collection of the amounts past due, the outstanding loan balance and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210] or by any other reasonable means as may be provided by law, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered, or otherwise available as security or collateral. [415 ILCS 5/19.6]*

**Section 365.520 Noncompliance with Loan Procedures**



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- a) In the event of noncompliance with any condition or obligation arising out of the loan, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient including, but not limited to, one or more of the following actions:
  - 1) Commence legal action in a court of competent jurisdiction;
  - 2) Declare all amounts under the loan immediately due and payable, enforce any security, and recover all loan funds;
  - 3) Terminate the loan pursuant to Section 365.540;
  - 4) Suspend all or part of the project work pursuant to Section 365.530;
  - 5) Reduce the amount of the loan by the amount of misused funds; or
  - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.
- c) In determining whether to take action, the Agency shall, at a minimum, consider mitigating or aggravating factors, including, but not limited to, the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

#### **Section 365.530 Stop-Work Order**

- a) In the event of any violation of this Part or noncompliance with the terms of the loan agreement, the Agency may, by written order, require the loan recipient to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall include a list of the project activities to which it applies. Upon receipt of a stop-work order, the loan recipient shall immediately comply with its terms and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 30 days after the date of the stop-work order, or within the period of any extension to which the parties have agreed, the Agency shall:

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- 1) cancel the stop-work order upon resolution of the violation or cause leading to that stop-work order; or
  - 2) terminate the work covered by the stop-work order as provided in Section 365.540(a).
- b) If a stop-work order is canceled or the period of the order or any extension expires, the loan recipient shall resume work. An adjustment may be made in the loan period, the project period, the loan amount, or any combination of these, and the loan amended accordingly, if the loan recipient asserts a written claim for an adjustment within 30 days after the end of the work stoppage.
- c) All costs that are incurred by the loan recipient after the receipt of a stop-work order, or during any extension of the stop-work order period to which the Agency and the loan recipient have agreed, shall be deemed ineligible costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

#### **Section 365.540 Termination**

- a) Loan Termination by the Agency
- 1) The Agency, by written notice to the loan recipient, may terminate the loan in whole or in part. Cause for termination shall include, but not be limited to, the following:
    - A) failure by the loan recipient to comply with the terms and conditions of the loan;
    - B) after 10 days written notice from the Agency, failure by the loan recipient or any of its contractors or subcontractors to provide access as required by Section 365.620(d);
    - C) after 10 days written notice from the Agency, failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 365.410(d).
  - 2) Upon loan termination, the loan recipient shall refund any unexpended loan funds to the State of Illinois to be deposited in the WPCLP, except for any portion that may be required to pay the eligible cost of materials

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and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination. In addition, any loan recipient, contractor or subcontractor found in noncompliance with Section 365.620(d) or Section 365.410(d) shall repay any loan funds previously spent.

- b) **Project Termination by the Loan Recipient**  
A loan recipient who wishes to terminate a project for which the loan has been provided must submit a written request to the Agency that documents good cause for the proposed termination. If the Agency agrees that there is good cause for termination of all or any portion of the project, it shall enter into a termination agreement with the loan recipient or unilaterally terminate the loan. If the Agency finds that the loan recipient has terminated the project without good cause, it shall declare the loan in default, and all loan funds previously paid to the loan recipient, together with interest on the loan, shall be returned to the State of Illinois, in accordance with a schedule established by the Agency, for deposit into the WPCLP. Good cause to terminate a loan project includes, but is not limited to:
- 1) changes in economic circumstances within the loan recipient's service area; and
  - 2) information that the approved treatment technology will not perform as originally anticipated.

#### SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

##### **Section 365.610 Requirements for Subagreements**

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction of projects funded from the WPCLP. Any procurement method, except as allowed under this Part, that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**  
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under WPCLP loans.

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- b) **Loan Recipient Responsibility**

The loan recipient shall be responsible for the administration and successful accomplishment of the project for which WPCLP loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. The individual or firm shall be deemed the loan recipient's agent and shall be subject to all the provisions of the loan agreement and all the provisions of this Part that apply to the loan recipient.
- c) **Privity of Contract**

Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts) or to any solicitation or request for proposals under those subagreements.
- d) **Subagreements shall:**
  - 1) be directly related to the accomplishment of the loan recipient's approved work program;
  - 2) be in the form of an executed written agreement (except for small purchases of \$150,000 or less);
  - 3) be for monetary or in-kind consideration; and
  - 4) not be in the nature of a grant or gift.
- e) **Documentation**
  - 1) Procurement records and files for purchases in excess of \$150,000 shall include the following:
    - A) the basis for contractor selection;
    - B) the justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and

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- C) the basis for award cost or price.
- 2) Procurement documentation as described in subsection (e)(1) shall be retained by the loan recipient or contractors for the period required by Section 365.470 (Ongoing Auditing and Monitoring Financial Capability).
- f) Subagreements shall only be awarded to persons or organizations that:
  - 1) Have adequate financial resources for performance;
  - 2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;
  - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
  - 4) Have a satisfactory record of integrity, judgment, and performance;
  - 5) Have an adequate financial management system and audit procedure that is consistent with auditing standards generally accepted in the United States;
  - 6) Maintain a standard of procurement in accordance with this Part;
  - 7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
  - 8) Conform to the civil rights, equal employment opportunity, and labor law requirements of this Part.
- g) Fraud and Other Unlawful or Corrupt Practices
  - 1) The obtaining and administration of loans from the WPCLP, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of that conduct and for cooperation with appropriate authorities in the prosecution of any such

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conduct.

- 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- h) Negotiation of Subagreements  
All subagreements shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent and not be in conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:
- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement);
  - 2) The aggregate amount of the contract to be competitively negotiated is allowed by State law;
  - 3) The materials or services to be procured are available from only one person or firm;
  - 4) The procurement is for personal or professional services, or for any services to be rendered by an educational institution;
  - 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
  - 6) The procurement is for materials or services for which the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

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**Section 365.620 Construction Contracts**

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) Each construction contract shall include the following provisions:
  - 1) Audit; Access to Records
    - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work in accordance with generally accepted accounting principles. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under Section 365.420(b)(2) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, papers, documents, and other evidence for purposes of inspection, audit, examination, excerpts, transcriptions, and copying. The contractor shall provide facilities for access and inspection.
    - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as required by subsection (a)(1)(A) for all negotiated change orders and contract amendments in excess of \$150,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records required by subsection (a)(1)(A) in all contracts and all tier subcontracts or change orders in excess of \$150,000 that are directly related to project performance.
    - C) Audits shall be in accordance with auditing standards generally accepted in the United States.
    - D) The contractor shall agree to the disclosure of all information and reports resulting from access to records required by subsection (a)(1)(A). When the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent

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portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

- E) The records required by subsection (a)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim, or exception.
  - F) The right of access will generally be exercised with respect to financial records under:
    - i) negotiated prime contracts;
    - ii) negotiated change orders or contract amendments in excess of \$150,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
    - iii) subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
  - G) The right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
    - i) with respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
    - ii) if there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) Covenant Against Contingent Fees



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The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

- 3) **Wage Provisions**  
The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act (40 USC 3141 through 3148), as defined by the US Department of Labor.
- 4) **Disadvantaged Business Enterprise Requirements**  
The contractor shall provide evidence that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction, and services, consistent with the provisions of the Agency's Operating Agreement with USEPA.
- 5) **Debarment and Suspension Provisions**  
The contract shall require the successful bidders to submit a Certification Regarding Debarment, Suspension and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549.
- 6) **Nonsegregated Facilities Provisions**  
The successful bidder shall be required to submit a certification of nonsegregated facilities on forms provided by the agency.
- 7) **American Iron and Steel**  
The successful bidder shall be required to use American Iron and Steel, if required by USEPA for that fiscal year.
- 8) **A clause that provides:**  
"No contractor or subcontractor shall discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor or subcontractor shall carry out applicable requirements of 40 CFR 33 in the award and administration of contracts awarded under the WPCLP. Failure by the contractor or subcontractor to carry out these

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requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- b) **Subcontracts Under Construction Contracts**  
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with:
  - 1) all applicable provisions of federal, State, and local law;
  - 2) all provisions of this Part regarding fraud and other unlawful or corrupt practices;
  - 3) all provisions of this Part with respect to access to facilities, records and audit of records; and
  - 4) all provisions of subsection (a)(5) that require a Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with any controlling federal Executive Orders.
  
- c) **Contractor Bankruptcy**  
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.
  
- d) Every contract entered into by the loan recipient for construction work, and every subagreement, shall provide Agency representatives with access to the work. The contractor or subcontractor shall provide facilities for the access and inspection.

**Section 365.630 Contracts for Personal and Professional Services**

All subagreements for personal and professional services for design or construction expected to exceed \$150,000 in the aggregate shall include the following subagreement provisions.

- a) Subagreements for personal and professional construction services shall include:

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- 1) Evidence that affirmative steps have been taken in accordance with 40 CFR 33 to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
- 2) An audit and access to records clause that provides as follows:
  - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$150,000.
  - B) Books, records, documents, and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained in accordance with generally accepted accounting principles. The Agency or any of its authorized representatives shall have access to the books, records, documents, and other evidence for the purpose of inspection, audit, and copying. Facilities shall be provided for access and inspection.
  - C) Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States.
  - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
  - E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes), litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.

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- 3) A covenant against contingent fees clause as follows:

“The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.”
  - 4) A Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549.
  - 5) A description of the scope and extent of the project work.
  - 6) The schedule for performance and completion of the contract work including, when appropriate, dates for completion of significant project tasks.
  - 7) A method of compensation.
  - 8) A clause as follows:

“No contractor or subcontractor shall discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor or subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under the WPCLP. Failure by the contractor or subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.
  - c) If, at the time of contract execution, any of the elements required in this Section

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365.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

**Section 365.640 Compliance with Procurement Requirements for Construction Contracts**

- a) **Loan Applicant Responsibility**

The loan applicant shall be responsible for selecting the low, responsive, and responsible bidder or other contractor in accordance with applicable requirements of State, federal, and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan applicant shall also be responsible for the initial resolution of complaints based upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan applicant for resolution. The loan applicant shall promptly determine each complaint on its merits and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for their views concerning the proposed procurement. The loan applicant shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion, providing a justification for its determination.
- b) **Time Limitations**

Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with subsection (c).
- c) **Remedies**

All claims, counter-claims, disputes, and other matters in question between the recipient and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of competent jurisdiction within the State.
- d) **Deferral of Procurement Action**

If the determination of a complaint by the loan applicant is adverse to the complainant, the loan applicant shall defer issuance of its solicitation or award or

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notice to proceed under the contract (as appropriate) for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan applicant, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.

#### **Section 365.650 Disputes**

- a) Only the loan recipient may appeal to the Agency in its own name and for its own benefit, under the disputes provision of a loan, with respect to its subagreements. Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provisions of a loan in its own name or interest.
- b) Any dispute arising under the loan that is not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing and mail or otherwise furnish it to the loan recipient. The decision of the Director shall be in accordance with this Part and shall be final and conclusive.
- c) The disputes provision shall not preclude the Director from considering questions of law in any decision.

#### **Section 365.660 Indemnity**

The loan recipient shall assume the entire risk, responsibility and liability for all loss or damage to property owned by the loan recipient, by the Agency or by third persons, and for any injury to or death of any persons (including employees of the loan recipient) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of the WPCLP loan. The loan recipient shall indemnify, save harmless, and defend the State of Illinois and the Agency from all claims for loss, damage, injury or death, whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise, consistent with the provisions of Section 1 of the Construction Contract Indemnification for Negligence Act [740 ILCS 35/1]. The loan recipient shall require that all its contractors and subcontractors agree in writing that they will look solely to the loan recipient for performance of the contract or satisfaction of all claims arising under the contract.

#### **Section 365.670 Covenant Against Contingent Fees**

The loan recipient shall warrant that no person or agency has been employed or retained to solicit or secure a WPCLP loan upon an agreement or understanding for a commission, percentage,

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brokerage, or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul the loan in accordance with Section 365.520 or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.