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**CHIEF PROCUREMENT OFFICER FOR CAPITAL
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Chief Procurement Officer for Capital Development Board

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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or preemptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register.

The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2016

Issue#	Rules Due Date	Date of Issue
1	December 21, 2015	January 4, 2016
2	December 28, 2015	January 8, 2016
3	January 4, 2016	January 15, 2016
4	January 11, 2016	January 22, 2016
5	January 19, 2016	January 29, 2016
6	January 25, 2016	February 5, 2016
7	February 1, 2016	February 16, 2016
8	February 8, 2016	February 19, 2016
9	February 16, 2016	February 26, 2016
10	February 22, 2016	March 4, 2016
11	February 29, 2016	March 11, 2016
12	March 7, 2016	March 18, 2016
13	March 14, 2016	March 25, 2016
14	March 21, 2016	April 1, 2016
15	March 28, 2016	April 8, 2016
16	April 4, 2016	April 15, 2016
17	April 11, 2016	April 22, 2016
18	April 18, 2016	April 29, 2016
19	April 25, 2016	May 6, 2016
20	May 2, 2016	May 13, 2016
21	May 9, 2016	May 20, 2016
22	May 16, 2016	May 27, 2016

23	May 23, 2016	June 3, 2016
24	May 31, 2016	June 10, 2016
25	June 6, 2016	June 17, 2016
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30	July 11, 2016	July 22, 2016
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32	July 25, 2016	August 5, 2016
33	August 1, 2016	August 12, 2016
34	August 8, 2016	August 19, 2016
35	August 15, 2016	August 26, 2016
36	August 22, 2016	September 2, 2016
37	August 29, 2016	September 9, 2016
38	September 6, 2016	September 16, 2016
39	September 12, 2016	September 23, 2016
40	September 19, 2016	September 30, 2016
41	September 26, 2016	October 7, 2016
42	October 3, 2016	October 14, 2016
43	October 11, 2016	October 21, 2016
44	October 17, 2016	October 28, 2016
45	October 24, 2016	November 4, 2016
46	October 31, 2016	November 14, 2016
47	November 7, 2016	November 18, 2016
48	November 14, 2016	November 28, 2016
49	November 21, 2016	December 2, 2016
50	November 28, 2016	December 9, 2016
51	December 5, 2016	December 16, 2016
52	December 12, 2016	December 27, 2016
53	December 19, 2016	December 30, 2016

Editor's Note: The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from October 15, 2016 until January 3, 2017.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED REPEALER

- 1) Heading of the Part: Procedures for Issuing Loans From the Water Pollution Control Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 365
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
365.110	Repealed
365.120	Repealed
365.130	Repealed
365.140	Repealed
365.220	Repealed
365.230	Repealed
365.240	Repealed
365.250	Repealed
365.260	Repealed
365.310	Repealed
365.320	Repealed
365.330	Repealed
365.340	Repealed
365.410	Repealed
365.420	Repealed
365.430	Repealed
365.440	Repealed
365.450	Repealed
365.460	Repealed
365.470	Repealed
365.520	Repealed
365.530	Repealed
365.540	Repealed
365.560	Repealed
365.610	Repealed
365.620	Repealed
365.630	Repealed
365.640	Repealed
365.650	Repealed
365.660	Repealed
365.670	Repealed
365.710	Repealed
365.720	Repealed

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365.730	Repealed
365.740	Repealed
365.750	Repealed
365.810	Repealed
365.820	Repealed
365.830	Repealed
365.910	Repealed
365.920	Repealed
365.930	Repealed
365.940	Repealed
365.950	Repealed
365.1010	Repealed
365.1020	Repealed
365.1030	Repealed
365.1110	Repealed
365.1120	Repealed
365.APPENDIX A	Repealed
365.EXHIBIT C	Repealed
365.EXHIBIT D	Repealed
365.APPENDIX B	Repealed
365.EXHIBIT A	Repealed
365.EXHIBIT B	Repealed
365.EXHIBIT C	Repealed

- 4) Statutory Authority: Implementing and authorized by Sections 19.1 through 19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1 through 19.9]
- 5) A Complete Description of the Subjects and Issues Involved: The Illinois EPA proposes to repeal Part 365 and replace with new rules in Part 365 pursuant to the Illinois Environmental Protection Act.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

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- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:
- Rex L. Gradeless
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield IL 62794-9276
- 217/782-5544
Rex.Gradeless@Illinois.Gov
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small businesses, small municipalities or not-for-profit corporations seeking loans under the Water Pollution Control Loan Program could be affected by this rulemaking.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: 40 Ill. Reg. 1260; January 15, 2016.

The full text of the Proposed Repealer begins on the next page:

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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 (REPEALED)

SUBPART A: INTRODUCTION

Section	
365.110	Purpose
365.120	Administration
365.130	Definitions
365.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM

Section	
365.210	Involvement of USEPA in the Operation of the Fund (Repealed)
365.220	Uses of the Water Pollution Control Loan Program
365.230	Agency Responsibilities under Title VI of the CWA
365.240	Requirements for Loan Recipients under Title VI of the CWA
365.250	Green Project Reserve
365.260	Principal Forgiveness

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

Section	
365.310	Noncompliance with Loan Procedures
365.320	Stop-Work Order
365.330	Termination
365.340	Waiver of Procedures

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section

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- 365.410 Project Priority Determination
- 365.420 Pre-Applications for Financial Assistance and Identification of Projects to be Funded
- 365.430 Financial Assistance Application and Approval
- 365.440 Fixed Loan Rate
- 365.450 Refinancing
- 365.460 Limitation on Design Cost
- 365.470 Limitation on Loan Assistance

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section

- 365.510 Sewer System Evaluation and Rehabilitation (Repealed)
- 365.520 Loan Applicant's Responsibilities During Facilities Planning
- 365.530 State Environmental Review
- 365.540 Limitations on Awards for Individual Systems
- 365.550 Value Engineering Requirements (Repealed)
- 365.560 Areawide Waste Treatment Management Planning

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section

- 365.610 Requirements for Subagreements
- 365.620 Construction Contracts
- 365.630 Contracts for Personal and Professional Services
- 365.640 Compliance with Procurement Requirements for Construction Contracts
- 365.650 Disputes
- 365.660 Indemnity
- 365.670 Covenant Against Contingent Fees

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

Section

- 365.710 Construction Initiation
- 365.720 Project Changes
- 365.730 Construction Engineering
- 365.740 Operation and Maintenance of the Project
- 365.750 Final Inspection

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- 365.760 Project Performance Certification (Repealed)
365.770 Project Performance Certification (Renumbered)

SUBPART H: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

Section

- 365.810 Access
365.820 Audit and Records
365.830 Single Audit Act

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section

- 365.910 Sewer Use Ordinance
365.920 User Charges
365.930 Financial Capability
365.940 Dedicated Source of Revenue
365.950 Floodplain Insurance

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

- 365.1010 Determination of Allowable Costs
365.1020 Use of Loan Funds and Payment of Unallowable Costs
365.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section

- 365.1110 Loan Repayment to the Agency
365.1120 Delinquent Loan Repayments

365.APPENDIX A Executive Orders

- 365.EXHIBIT A Executive Order 11625 (Repealed)
365.EXHIBIT B Executive Order 12138 (Repealed)
365.EXHIBIT C Executive Order 12549
365.EXHIBIT D Executive Order 11246

365.APPENDIX B Loan Application Documents

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365.EXHIBIT A	Loan Application Form
365.EXHIBIT B	Program Financial Requirements
365.EXHIBIT C	Bid Certifications Form

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; amended at 40 Ill. Reg. 6577, effective April 1, 2016; repealed at 40 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

Section 365.110 Purpose

- a) The Water Quality Act of 1987 (the 1987 Amendments) which amended the federal Water Pollution Control Act (33 USC 1251 et seq.) sets forth a schedule and mechanism for the transition from the federal level to the State and local level for responsibility of funding wastewater treatment facilities. Title VI of the 1987 Amendments creates a new authority that authorizes the United States Environmental Protection Agency (USEPA) to make grants to states to capitalize State water pollution control revolving funds. Title VI also establishes specific requirements for states for the development and operation of the State loan programs, some of which must be assumed by the loan recipient.
- b) This Part 365 sets forth procedures to be used by the Illinois Environmental Protection Agency to operate the Water Pollution Control Loan Program (WPCLP), including the issuance of loans for the construction of wastewater treatment works as authorized by P.A. 85-1135, effective September 1, 1988 and amended by P.A. 90-121, effective July 17, 1997 and the use of additional subsidization terms, including forgiveness of principal, negative interest rates, and grants to eligible applicants for the construction of wastewater facilities and other facilities that meet the federal green project reserve requirement.

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Section 365.120 Administration

- a) The WPCLP, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and the USEPA in accordance with State and federal laws.
- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of a WPCLP loan application can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276 and is also available at the Agency's website at <http://www.epa.state.il.us/water/forms.html#financial-assistance>.

Section 365.130 Definitions

- a) Unless specified otherwise, all terms 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 Clean Water Act (CWA), as amended (33 USC 1251 et seq.).
- b) For the purposes of this Part 365, the following definitions apply:

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.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

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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 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 that 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(d)]

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.

Cost-Effectiveness Analysis – An analysis of the feasible alternatives, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations.

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

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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 Facility 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 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 interest rate on the loan. The fixed loan rate shall be determined on an annual basis by the procedures defined in Section 365.440 (Fixed Loan Rate) of this Part.

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Fund – The Water Revolving Fund as authorized by 415 ILCS 5/19.3, 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 features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduces 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 particular portion of a Capitalization Grant Agreement that is required to be used by the State for projects 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

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planned, designed, and constructed.

Intended Use Plan – A plan that 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)]

Interest Rate – Not less than one-half of the Fixed Loan Rate rounded to the nearest 0.01%.

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 the USEPA.

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 Commitment Letter – The letter that is sent by the Agency to the loan applicant that reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The procedures for issuing loans from the WPCLP as set out in this Part 365.

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

Loan Support Rate – Not more than one-half of the Fixed Loan Rate rounded to the nearest 0.01%.

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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 State fiscal 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 US Department of Commerce, Bureau of the Census.

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]

Population – The population is the American Community Survey 5-year estimate from the US Department of Commerce, Bureau of the Census.

Principal – All disbursements, including interest and loan support accrued on the disbursements, that will be financed at the time the repayment schedule period begins.

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

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

Source of Revenue – All revenues of the loan applicant that are sufficient to repay the principal and interest on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder 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.

Title VI – Title VI of the federal Clean Water Act (33 USC 1251 et seq.).

Treatment Works – Treatment works, as defined in section 212 of the

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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.

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.

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WPCLP – Water Pollution Control Loan Program as authorized by
Section 19.2 of the Environmental Protection Act. [415 ILCS 5/19.2]

Section 365.140 Incorporations by Reference

- a) The following publications are incorporated by reference:
 - 1) Operation of Wastewater Treatment Plants (1980), 2nd edition (three volumes) (California State University, Office of Water Programs, 6000 J Street, Sacramento CA 95819-6025).
 - 2) Operation and Maintenance of Wastewater Collection Systems (1983), 1st edition (California State University, Office of Water Programs, 6000 J Street, Sacramento CA 95819-6025).
- b) This Part 365 incorporates no later amendments or editions.

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM

Section 365.210 Involvement of USEPA in the Operation of the Fund (Repealed)**Section 365.220 Uses of the Water Pollution Control Loan Program**

The Water Pollution Control Loan Program shall be used and administered by the Agency to provide assistance for the following purposes:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit to finance the construction of wastewater treatment works and projects that fulfill federal State Revolving Fund grant requirements for a green project reserve;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible*

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local government unit and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants;

- d) *With respect to funds under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred on or after October 1, 2008;*
- e) *With respect to funds under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for treatment works incurred on or after October 1, 2008;*
- f) *To make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit to buy or refinance debt obligations for costs incurred after March 7, 1985 for the construction of wastewater treatment works, and projects that fulfill federal State Revolving Fund grant requirements for a green project reserve;*
- g) *To make direct loans at or below market interest rates for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act, as amended;*
- h) *To guarantee or purchase insurance for local obligations where such action would improve credit market access or reduce interest rates;*
- i) *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 Fund;*
- j) *To finance the reasonable costs incurred by the Agency in the administration of the Fund; and*
- k) *To transfer funds to the Public Water Supply Loan Program. [415 ILCS 5/19.3(b)]*

Section 365.230 Agency Responsibilities under Title VI of the CWA

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- a) The WPCLP shall be established in accordance with the requirements of Title VI prior to the receipt of the capitalization grant for deposit into the WPCLP.
- b) The Agency will prepare an Intended Use Plan and negotiate an Operating Agreement with the USEPA that will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities, and assurances for operation of the WPCLP including, but not limited to, the following:
 - 1) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and the USEPA;
 - 2) In satisfaction of the requirements of the Capitalization Grant Agreement, State match will be deposited into the WPCLP according to an agreed upon schedule;
 - 3) A listing and description of projects on the Project Priority List to be provided financial assistance and the terms of the financial assistance;
 - 4) Binding commitments for each quarterly federal grant payment shall be made by the Agency within one year after the receipt of each payment in satisfaction of the requirements of the Capitalization Grant Agreement;
 - 5) Funds as a result of the Capitalization Grants must first be used to assure maintenance of progress toward compliance with the enforceable deadlines, goals and requirements of the CWA and Capitalization Grant Agreement;
 - 6) Loan award and disbursement procedures to document the loan recipient's compliance with Title VI requirements;
 - 7) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
 - 8) All repayments of loan principal and interest shall be deposited into the WPCLP;
 - 9) Annual reporting to the USEPA on the Agency's progress toward meeting

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its goals and objectives; and

- 10) An annual audit of the WPCLP in accordance with the auditing procedures of the General Accounting Office (75 USC 31).

Section 365.240 Requirements for Loan Recipients under Title VI of the CWA

- a) Only local government units will be eligible for loans for wastewater treatment works projects or facilities that meet the requirements of the federal Green Project Reserve.
- b) Loan projects must be on the Project Priority List.
- c) Loan projects must be consistent with any plans developed under sections 205(j), 208, 303(e), and 319 of the CWA.
- d) A dedicated source of revenue, sufficient to pay principal and interest when due, must be enacted and pledged by the loan recipient for repayment of the loan.
- e) Loan projects must meet disadvantaged business enterprise requirements in accordance with 40 CFR 33.
- f) Loan projects must meet the applicable requirements of any other federal laws and authorities.
- g) Loans will be made at or below market interest rates.
- h) Loan accounts related to the project construction and the dedicated source of revenue will be maintained by the loan recipient in accordance with Generally Accepted Accounting Principles.
- i) Loans will be fully amortized not later than 20 years after the earlier of the initiation of operation date or the initiation of the loan repayment period.

Section 365.250 Green Project Reserve

Amounts required by the terms of the Capitalization Grant Agreement shall be for projects to address green infrastructure, water and energy efficiency improvements and environmentally innovative activities.

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AGENCY NOTE: Loan applicants and other interested parties may obtain additional information on current Green Project Reserve amounts and guidance by accessing the Agency's website at: <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027. This information will be added to this rule.

Section 365.260 Principal Forgiveness

- a) When the Agency provides assistance to a public loan recipient using funds from its 2015 capitalization grant, the Agency shall, until the available principal forgiveness funding, as 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
 - 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 15,000 or less;
 - B) The median household income 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

Points	MHI as % of Statewide MHI
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%

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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

Points	Population
5	10,000 - 15,000
10	7,500 - 9,999
15	5,000 - 7,499
20	2,500 - 4,999
25	1,000 - 2,499
30	500 - 999
35	0 - 499

iii) Additional Criteria

Points	Additional Criteria
1	Unemployment rate is greater than the State's unemployment rate by one percentage point or more
4	Decrease in population between the 2000 and 2010 Federal Censuses

- 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 of Loan
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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:
- 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 Fund while ensuring the fund operates in perpetuity; and
 - 4) requirements established by USEPA (e.g., any additional requirements USEPA places on a particular year's capitalization grant).

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE TO
COMPLY WITH LOAN PROCEDURES

Section 365.310 Noncompliance with Loan Procedures

- 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;

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- 3) Terminate the loan pursuant to Section 365.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 365.320 (Stop-Work Order) of this Subpart;
 - 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 365.320 Stop-Work Order

- a) In the event of any violation of this Part 365 or non-compliance 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:
- 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 365.330(a) of this Subpart.

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- b) If a stop-work order is cancelled or the period of the order or any extension thereof 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 such 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 unallowable costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

Section 365.330 Termination

- a) **Loan Termination by the Agency**

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, failure by the loan recipient to comply with the terms and conditions of the loan. 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 such portion as may be required to pay the allowable cost of materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination.
- 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

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- 2) Information that the approved treatment technology will not perform as originally anticipated.

Section 365.340 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 the Director deems necessary.
- b) The following procedures will not be waived:
 - 1) Section 365.410 (Project Priority Determination) of this Part
 - 2) Section 365.440 (Fixed Loan Rate) of this Part
 - 3) Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part
 - 4) Section 365.530 (State Environmental Review) of this Part
 - 5) Section 365.540 (Limitations on Awards for Individual Systems) of this Part
 - 6) Section 365.560 (Areawide Waste Treatment Management Planning) of this Part
 - 7) Section 365.620(d)(3) (Wage Provisions) of this Part
 - 8) Section 365.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part
 - 9) Section 365.620(d)(5) (Debarment and Suspension Certification) of this Part

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- 10) Section 365.630(a)(1) (Disadvantaged Business Enterprise Requirements) of this Part
 - 11) Section 365.630(a)(4) (Debarment and Suspension Certification) of this Part
 - 12) Section 365.750 (Operation and Maintenance of the Project) of this Part
 - 13) Section 365.910 (Sewer Use Ordinance) of this Part
 - 14) Section 365.920 (User Charges) of this Part
 - 15) Section 365.940 (Dedicated Source of Revenue) of this Part
- c) Notwithstanding subsection (b)(14), Section 365.920(b)(1) of this Part can be waived for loans issued between October 1, 1994 and October 1, 2006.
- d) Notwithstanding subsections (b)(6), (b)(12), (b)(13) and (b)(14), Sections 365.560, 365.750, 365.910 and 365.920 of this Part can be waived for projects that fulfill federal State Revolving Fund grant requirements for the green project reserve.

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section 365.410 Project Priority Determination

- a) Financial assistance from the WPCLP will be provided for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 366.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 366 after the receipt by the Agency of both loan pre-applications pursuant to Section 365.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Facilities Planning pursuant to Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) and Section 365.530 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.
- c) Projects included on the Intended Use Plan will be selected from projects on the

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Project Priority List in priority order, provided the project has an approved facilities plan and is scheduled to initiate construction by March 31 of the subsequent federal fiscal year.

- d) **Cash Flow Demand Funding**
The available funds for a project may be decreased by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle or to accommodate the funding constraints of the WPCLP. Projects that receive adjustments to meet cash flow demands or to accommodate the funding constraints of the WPCLP may be afforded an opportunity for additional funding in future funding cycles as funds become available under the terms and interest rate available in that funding cycle.

Section 365.420 Pre-Applications for Financial Assistance and Identification of Projects to be Funded

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application that includes at a minimum the following items:
- 1) Legal name of applicant;
 - 2) Address;
 - 3) Authorized representative – name and title;
 - 4) Project classification (35 Ill. Adm. Code 366);
 - 5) Project description;
 - 6) Discharge location point;
 - 7) Cost estimate; and
 - 8) Project schedule.
- b) Loan applicants seeking financial assistance, during any federal fiscal year commencing October 1, must file a new pre-application annually by the preceding March 31 to qualify for possible inclusion in the Intended Use Plan.

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- c) A project with approved facility planning may be added to the Project Priority List at any time by the submission of a pre-application.
- d) The Agency shall publish a list of the projects that are proposed for funding. These projects will be included in the Intended Use Plan.
- e) After January 1 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan commitments to other projects on the Project Priority List in accordance with Section 365.430 (Financial Assistance Application and Approval) of this Subpart.

Section 365.430 Financial Assistance Application and Approval

- a) In order to issue a loan commitment letter, the Agency must have received the following documents:
 - 1) A completed Loan Application Form for financial assistance (Appendix B, Exhibit A), which will necessarily include the following certifications and authorizations with regard to the proposed project:
 - A) Loan Program Certifications;
 - B) Certification Regarding Debarment, Suspension and Other Responsibility Matters;
 - C) Certification of Intent Regarding National Flood Insurance;
 - D) Certification Regarding Project Site, Rights-of-Way, Easements and Permits; and
 - E) Authorization of a Representative to Sign Loan Documents;
 - 2) An approved facilities plan in accordance with Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part;
 - 3) A completed Financial Information Checklist (Appendix B, Exhibit B), which will necessarily address the following requirements:

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- A) An enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency;
- B) Proof of publication of the ordinance and any notice required by State statute, when applicable;
- C) When applicable, an approved sewer use ordinance and user charge system in accordance with Sections 365.910 (Sewer Use Ordinance) and 365.920 (User Charges) of this Part;
- D) Documentation to support the loan applicant's ability to repay the loan in accordance with Sections 365.930 (Financial Capability) and 365.940 (Dedicated Source of Revenue) of this Part;
- E) 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; and
- F) A Tax Exemption Certificate and Agreement;

AGENCY NOTE: Guidance for loan applicants on the satisfaction of financial requirements detailed in subsections (a)(3)(A) through (F) is provided in Appendix B, Exhibit B.

- 4) Design documents, including plans and specifications, with a construction permit or "authorization to construct" from the Agency, pursuant to the provisions of 35 Ill. Adm. Code 309.154 and 309.202, whichever is applicable;
- 5) A project completion schedule;
- 6) When necessary, an executed inter-governmental agreement necessary for project implementation;
- 7) An executed contract for design and construction related work in accordance with Section 365.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs;

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- 8) An EPA Form 4700-4, Compliance Report; and
 - 9) Any other executed legal agreements necessary for project implementation.
- b) In addition to the items identified in subsection (a), the Agency must have received a completed Bid Certifications Form (Appendix B, Exhibit C) and all other relevant attachments before it will issue the Loan Agreement. Key elements of the bid package that are required by the Bid Certifications Form include the following items:
- 1) A certified copy of the published bid advertisement or advertisements;
 - 2) The bid tabulations and selected bidder's proposal, along with a summary of any addenda issued by the loan applicant, if applicable;
 - 3) An analysis of the bids and recommendations for the award of the bids;
 - 4) The notice of the applicant's 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; and
 - 6) 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.

AGENCY NOTE: Guidance for loan applicants on the satisfaction of disadvantaged business enterprise requirements detailed in subsection (b)(5) can be found on the Agency's website at:
<http://www.epa.state.il.us/water/forms.html#financial-assistance>.

Section 365.440 Fixed Loan Rate

- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a WPCLP loan shall be a simple annual rate at one-half the market interest rate.

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- b) Notwithstanding subsection (a), for federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the fixed loan rate charged for all loans from the WPCLP shall be a simple annual rate of 1.25%.

Section 365.450 Refinancing

- a) Design costs, as set forth in Section 365.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement are eligible for refinancing.
- b) Costs under a construction contract executed prior to the award of the loan agreement shall be eligible for refinancing only when the following conditions apply:
 - 1) The project meets the definition of a compliance project in accordance with Section 365.130 (Definitions) of this Part;
 - 2) The compliance project costs were incurred and construction was initiated after March 7, 1985; and
 - 3) The loan applicant has received written approval from the Agency prior to the award of the construction contract.
- c) Project costs refinanced shall receive the terms and interest rate available for the federal fiscal year that the loan agreement is issued.

Section 365.460 Limitation on Design Cost

Allowable costs for design of the loan project will be limited to the actual cost incurred for design up to a maximum percentage of the allowable as bid construction cost.

- a) For allowable as bid construction costs of \$500,000 or less, the design will be funded up to 15%;
- b) For allowable as bid construction costs of \$500,001 to \$2,000,000, the design will be funded up to 12%;

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- c) For allowable as bid construction costs of \$2,000,001 to \$5,000,000, the design will be funded up to 10%;
- d) For allowable as bid construction costs of \$5,000,001 to \$10,000,000, the design will be funded up to 8%; and
- e) For allowable as bid construction costs of more than \$10,000,000, the design will be funded up to 7%.

Section 365.470 Limitation on Loan Assistance

- a) For each of federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the amount of financial assistance from the WPCLP to a loan applicant cannot exceed total eligible project costs or \$20,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.
- b) Notwithstanding subsection (a), for each of federal fiscal years 2010 and 2011 extending through and including September 30, 2011, the amount of financial assistance from the WPCLP to the Metropolitan Water Reclamation District of Greater Chicago cannot exceed total eligible project costs or \$100,000,000, whichever is less. Loans for multiple projects will be limited by the aggregate amount of those projects in relation to these limitations.
- c) For federal fiscal years 2012 and beyond, the Director of the Agency shall establish the annual limitations on loan assistance prior to the beginning of each federal fiscal year by considering the status of the Fund, capitalization grant amounts, economic conditions and requirements established by USEPA.

AGENCY NOTE: Loan applicants and other interested parties will be provided access to the Director's draft decision, which will be provided on the Agency's website followed by a public hearing with a comment period before a final decision is rendered. The information will be provided at <http://www.epa.state.il.us/water/financial-assistance> or by telephone at 217/782-2027 and will be added to this rule.

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section 365.510 Sewer System Evaluation and Rehabilitation (Repealed)

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Section 365.520 Loan Applicant's Responsibilities During Facilities Planning

- a) The loan applicant shall provide facilities planning, which shall consist of plans and studies that are directly related to the construction of wastewater treatment works and/or other facilities that fulfill federal State Revolving Fund grant requirements for the green project reserve, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle C and the CWA, while recognizing social, environmental, and economic conditions. The planning shall provide documentation on the need for the facilities for which loan assistance is being requested.
- b) If any information required to be furnished as part of a facilities plan has been developed separately, it shall be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The facilities plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any inter-governmental agreements or demonstrations of legal authority necessary to plan implementation.
- d) The facilities plan may include more than one construction project and provide the basis for several subsequent construction projects. A facilities plan that has served as the basis for providing a loan for a construction project shall be reviewed prior to providing any loan for a subsequent project involving construction to determine if changes have occurred that require amendments to the facilities plan. If substantial changes have occurred that warrant revision or amendment as specified in Section 365.530 of this Subpart, the plan shall be revised or amended and resubmitted for review and approval in accordance with the provisions of Section 365.530(a) and (b) of this Subpart.
- e) Facilities planning shall include the following elements in sufficient detail to, at minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 370.210:
 - 1) A complete description of the selected wastewater treatment system or other systems, identification of any existing violations of federal or State wastewater 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 applicant's selection of the recommended project, including an evaluation regarding the elimination of infiltration and inflow where applicable. When appropriate to the project scope, the following issues shall be addressed:
 - A) The relationship of the nature, size and 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 wastewater 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, including, at a minimum, comments

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from the Illinois Historic Preservation Agency and the Illinois Department of Natural Resources.

- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the project and repayment of the proposed loan amount, as well as the impact of these costs on the system users.
- 6) Information sufficient to support a determination as to whether the project may qualify as water efficiency, energy efficiency, green infrastructure or environmental innovation.

Section 365.530 State Environmental Review

- a) Prior to making a final determination on the acceptability of any facilities plan, the Agency shall undertake an environmental review. 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.
- b) The Agency shall not begin its environmental review until it has determined that the facilities plan conforms to the requirements of Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) 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 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.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the facilities plan and the Agency's environmental impacts assessment.

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- e) The PEID shall be mailed to the loan applicant and other interested parties, inviting public comment. The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comment. The public hearing shall be held within 60 days after receipt of the Agency's PEID or within an alternate time period that is justified by the loan applicant and approved by the Agency. 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.
- f) The time and place of the public hearing shall be conspicuously and adequately announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- g) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.
- h) Upon receipt of this public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
 - 1) An unconditional approval of the plan (original or as amended); or
 - 2) A conditional approval of the plan with special conditions; or
 - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
 - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- i) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall publish the Agency Notice of Intent in the newspaper of local record, and provide public access to the planning documents and the Agency Notice of Intent and allow for 10 days for written public

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comment. If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the facilities plan. Should valid concerns be raised over potential environmental impacts, the Agency shall proceed with an environmental review under this Section 365.530 or issue a conditional approval where the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.

- j) Agency approval of a facilities plan shall be valid for purposes of loan funding for a period of 5 years, after which time the plan must be updated and resubmitted to the Agency for review and approval. The Agency shall prepare a revised environmental review and provide an opportunity for public comment.
- k) At any time within 5 years from the date of facilities plan approval, the Agency may rescind its approval and require the planning 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 where 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.
- l) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved facilities plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.
- m) Agency facilities planning determinations made in accordance with subsections (h) and (i) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

Section 365.540 Limitations on Awards for Individual Systems

- a) Construction involving privately owned residential wastewater treatment works must be part of the cost-effective solution in the approved facilities plan.
- b) Loan applicants must have legal authority to access all such privately owned systems at all reasonable times for such purposes as inspections, monitoring,

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building, operation, maintenance, rehabilitation, and replacement.

Section 365.550 Value Engineering Requirements (Repealed)**Section 365.560 Areawide Waste Treatment Management Planning**

The project shall be consistent with the provisions of Sections 208 and 303(e) of the CWA.

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 365, 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.
- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under WPCLP loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 365.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **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

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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. Such an individual or firm shall be deemed the loan recipient's agent, and shall be subject to all the provisions of the loan agreement, including this Part 365, that apply to the loan recipient.

- d) 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.
- e) 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 \$25,000 or less);
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- f) Documentation
 - 1) Procurement records and files for purchases in excess of \$25,000 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
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection(f)(1) shall be retained by the loan recipient or contractor or contractors for the period required by Section 365.820 (Audit and Records) of this Part.

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- g) 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 of America;
 - 6) Maintain a standard of procurement in accordance with this Part 365;
 - 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 (Appendix A, Exhibit D) and labor law requirements of this Part 365.
- h) 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 such conduct and for cooperation with appropriate authorities in the prosecution of any such 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

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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.

- i) 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. 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 where 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.

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.

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- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 365.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
 - 1) Evidence of advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the WPCLP as set out in this Part 365, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit D).
 - 2) Adequate bidding documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) 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.);
 - B) The terms and conditions of the contract to be awarded;
 - C) 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;
 - D) 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

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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;

- E) 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;
- F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) 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 33 E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11]; and
- H) Each person signing the bid shall certify that:
 - i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and

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that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); 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 (b)(2)(G), and as their 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 (b)(2)(G).
- 3) Addenda to bidding documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
- 4) Award to the low, responsive, responsible bidder
- 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 written notice of Agency approval has been received by the loan applicant.
 - C) If the award is intended to be made to a firm that did not submit

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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.

- c) Negotiations of Contract Amendments (Change Orders)
 - 1) Loan recipient responsibility
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:
 - A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
 - 2) Changes in contract price or time
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
 - 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
 - 4) Agency review
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
 - A) A description of the changed work;
 - B) The contractor's proposal itemizing the cost and time to complete

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the changed work;

- C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) 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 subsection (c) (Negotiation of Contract Amendments (Change Orders)) 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, documents, and other evidence for purposes of inspection, audit, 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 specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
 - C) Audits shall be in accordance with auditing standards generally

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accepted in the United States of America.

- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where 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 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 (d)(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 \$25,000 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

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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.**
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 such commission, percentage, brokerage, or contingent fee.
 - 3) **Wage provisions**
The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor.
 - 4) **Disadvantaged business enterprise requirements**
The contractor shall provide evidence, including, but not limited to, a copy of the advertisement or advertisements and the record of negotiation, 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 bidder or bidders to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
 - 6) **Nonsegregated facilities provisions**
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts under construction contracts**

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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 365 regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part 365 with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) **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.

Section 365.630 Contracts for Personal and Professional Services

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with 40 CFR 33, that affirmative steps have been taken 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.

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- 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 \$25,000.
 - 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 of America.
 - 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) of this Subpart, 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.
- 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

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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 in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such 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 (Appendix A, Exhibit C).
 - 5) A description of the scope and extent of the project work.
 - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks.
 - 7) A method of compensation.
- 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 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

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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 applicant 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 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 this provision, with respect to its subagreements. Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provision of a loan in its own name or interest.

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- b) Any dispute arising under this 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 365 and shall be final and conclusive.
- c) The disputes clause 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, 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 365.310 (Noncompliance with Loan Procedures) of this Part or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

**SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT****Section 365.710 Construction Initiation**

Upon approval by the Agency of the loan applicant's financial assistance application in accordance with Section 365.430 (Financial Assistance Application and Approval) of this Part,

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and subject to the availability of funds, the Agency will issue the loan agreement and authorize the initiation of construction.

Section 365.720 Project Changes

- a) Prior approval of the Agency is required for any project change that may:
 - 1) Increase the amount of loan funds needed to complete the project;
 - 2) Alter the design or scope of the project;
 - 3) Extend any contract or loan completion date for the project;
 - 4) Alter the location, size, capacity or quality of any major item of equipment; or
 - 5) Alter the scope of the project by changing the methodologies or personnel to be used as agreed to at the time the loan was issued.
- b) The Agency will approve project changes that it determines are cost-effective and within the overall scope of the loan project, based on approved facilities planning.
- c) The loan recipient shall promptly notify the Agency, in writing, of all project changes. 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 such changes may result in:
 - 1) Disallowance of loan participation for costs incurred that are attributable to the change; and
 - 2) Termination of the loan.

Section 365.730 Construction Engineering

The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms with the approved plans and specifications.

Section 365.740 Operation and Maintenance of the Project

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In order for the Agency to approve the final inspection for the project, the loan recipient must certify that it has provided the following training and operation and maintenance documents:

- a) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project.
- b) An operation and maintenance reference library that includes, but is not limited to, the following:
 - 1) Manufacturer's literature, shop drawings and warranties;
 - 2) 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
 - 3) A maintenance schedule for the equipment and process units included in the project.
- c) Training pertaining to the general operation of treatment plants or collection systems consisting of an operator self-study course such as "Operation of Wastewater Treatment Plant", 1980, 2nd edition (three volumes) or "Operation and Maintenance of Wastewater Collection System", 1983, 1st edition, California State University, Sacramento.

Section 365.750 Final Inspection

The loan recipient shall notify the Agency in writing within 30 days after completion of project construction and shall submit the final change order, along with the contractor's final costs, to the Agency. The plans of record shall be forwarded to the appropriate Agency regional office. The Agency shall schedule the final inspection within 60 days after receipt of the notice of completion, provided that all necessary change orders have been submitted and approved.

Section 365.760 Project Performance Certification (Repealed)**Section 365.770 Project Performance Certification (Renumbered)**

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SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING, AND RECORDS**Section 365.810 Access**

- a) 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. After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Section 365.820 (Audit and Records) of this Subpart and to the project site during normal business hours, to the full extent of the loan recipient's right to access.
- b) 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 such access and inspection. The contract or subagreement shall also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records that are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions.
- c) Failure by the loan recipient or any of its contractors or subcontractors to provide access, after 10 days written notice from the Agency, shall be cause for termination of the loan pursuant to Section 365.330 (Termination) of this Part, and refund to the State of Illinois for deposit into the WPCLP any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section 365.810 shall repay any loan funds previously spent.

Section 365.820 Audit and Records

- a) The loan recipient shall maintain books, records, documents, reports, and other evidentiary material in accordance with Generally Accepted Accounting Principles.
- b) For purposes of this Section 365.820, records shall include, but not be limited to, the following:
 - 1) Documentation of the receipt and disposition by the loan recipient of all

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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's facilities, or any facilities engaged in the performance of the WPCLP loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 365.810 (Access) of this Subpart.
- d) 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 (e) and (f).
- e) 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 resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 365.650 of this Part, 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.
- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 365.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 365.330 (Termination) of this Part, and refund to the State of Illinois for deposit into the WPCLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in non-compliance with this Section

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365.820 shall repay any loan funds previously spent.

Section 365.830 Single Audit Act

The loan recipient shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501 et seq.).

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section 365.910 Sewer Use Ordinance

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's sewer use ordinance with enactment of the ordinance required prior to the first loan disbursement. The loan applicant shall demonstrate to the satisfaction of the Agency that a sewer use ordinance or other legally binding requirement will be enacted and enforced prior to the first loan disbursement in each jurisdiction served by the project. The ordinance shall prohibit any connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.
- b) The sewer use ordinance shall require:
 - 1) Pretreatment of any industrial wastes that would otherwise be detrimental to the wastewater treatment works or its proper and efficient operation and maintenance or will otherwise prevent entry of industrial wastes into the wastewater treatment works; and
 - 2) Compliance with 35 Ill. Adm. Code 310 (Pretreatment Programs).
- c) The sewer use ordinance shall prohibit the introduction of industrial waste into the sewer system until the requirements of Section 365.920 (User Charges) of this Subpart are met.

Section 365.920 User Charges

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's system of user charges. The user charge system must be enacted and enforceable before the first loan disbursement can be made.

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- b) The Agency shall approve the user charge system in accordance with the following criteria:
- 1) For loans issued prior to October 1, 2006, the user charge system must result in the distribution of the cost of operation, maintenance and replacement of treatment works within the loan recipient's service area to each user (or user class) in proportion to the user's contribution to the total wastewater loading of the wastewater treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation, maintenance, and replacement costs to each user (or user class).
 - 2) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience for existing wastewater treatment works or some other rational method that can be demonstrated to be applicable.
 - 3) The loan recipient shall review user charges annually and revise the rates periodically to reflect actual wastewater 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.
 - 4) The user charge system shall generate sufficient revenue to offset the cost for operation, maintenance and replacement required to be provided by the loan recipient for all wastewater treatment works or facilities authorized under this Part.
 - 5) The user charge system must 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.

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- c) Upon approval of a loan recipient's system of user charges, the implementation and maintenance of the approved system shall become a condition of the loan subject to Section 365.310 (Noncompliance with Loan Procedures) of this Part.
- d) 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 subsection (b).

Section 365.930 Financial Capability

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and institutional capability to:
 - 1) Construct, operate and maintain the project for the life of the facility;
 - 2) Retire the loan in accordance with the schedule to be contained in the loan agreement, including the execution of any necessary intergovernmental agreements, enactment of a system of user charges and any legislative enactments necessary to recover adequate capital costs to repay the loan; and
 - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and institutional capability, the loan applicant shall, at a minimum, show that:
 - 1) It is empowered under law to own, operate and maintain the facility to be constructed under the loan;
 - 2) It has the necessary easements, titles, permits and intergovernmental agreements for loan project implementation, as identified in the facilities plan; and
 - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation,

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maintenance and replacement costs, existing and proposed local capital costs and, upon request of the Agency, historical information over the past 3 years consisting of audited annual financial statements, bond ratings, numbers of users and tax rate levies.

- d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including, but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of dedicated revenues, efforts to reduce the number of delinquent users, and changes to existing financial practices that may threaten generation of adequate revenues.
- e) The Agency may require a loan term of less than the 20 year 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 365.940 Dedicated Source of Revenue

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual principal and interest payment funded within 2 years after the loan award.
- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) 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

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the dedicated source of revenue.

- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) 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 not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part 365.
- f) 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 re-examine the dedicated revenue source and restructure it as necessary.

Section 365.950 Floodplain Insurance

- a) 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), the loan recipient shall furnish written evidence that it 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.
- b) 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 the insurance for the entire useful life of the insurable structures.
- c) 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.
- d) The required insurance premium for the period of construction shall be an allowable project cost under Section 365.1010 (Determination of Allowable Costs) of this Part.

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

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Section 365.1010 Determination of Allowable Costs

The loan recipient shall be paid, upon request, in accordance with Section 365.1030 (Disbursement of Loan Funds) of this Subpart, 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 allowable in accordance with the following criteria:

- a) **Allowable Project Costs**

All reasonable and necessary costs directly attributable to the design and construction of an eligible, loan assisted project that are not excluded from loan funding by legislation or non-waivable regulations. Categories of necessary costs include, but are not limited to, the following:

 - 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;
 - 2) Professional and consultant services contracts necessary for design, bidding, and construction of a loan funded project, except as elsewhere limited by this Part 365;
 - 3) Costs under approved construction contracts; and
 - 4) Costs for premiums for required flood insurance during the project construction period.
- b) **Ineligible Costs**

Categories of cost that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:

 - 1) Cost for preparing a facilities planning document;
 - 2) Cost for basin or areawide planning other than facilities planning;
 - 3) Costs outside the scope of the approved facilities plan;
 - 4) Site acquisition, including easement compensation, except in those instances where the land itself shall serve as the medium for treatment (e.g., land for spray irrigation of wastewater); and

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- 5) Construction of any facilities that do not comply with the definition of a "treatment works" as contained in Section 212 of the Clean Water Act or do not qualify in meeting the federal green project reserve requirement.
- c) **Disputes Concerning Allowable Costs**
The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

Section 365.1020 Use of Loan Funds and Payment of Unallowable Costs

- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable 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.
- c) The loan recipient shall commit itself to complete the construction of the project.

Section 365.1030 Disbursement of Loan Funds

- a) Disbursements are subject to the appropriation of funds by the General Assembly and the availability of cash deposited into the WPCLP from drawdowns from the USEPA Automated Clearing House, State matching funds, repayments of existing loans, interest earnings on money in the WPCLP, and money deposited into the WPCLP from other sources.
- b) Disbursements shall be made as follows:
 - 1) After the receipt of a fully executed loan agreement, disbursement requests must be sent directly to the Agency. Actual disbursements shall be processed in accordance with the loan agreement.
 - 2) Disbursements will be processed based on costs incurred that are due and payable, as evidenced by invoices. The Agency may withhold any

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disbursement for a violation of the loan agreement conditions.

- c) The loan recipient shall make prompt payment to the contractor.
- d) 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 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.
- e) Before the final principal amount of the loan can be established:
 - 1) The Agency shall conduct a final inspection and a project review to insure that all applicable loan conditions have been satisfied; and
 - 2) The loan recipient must submit to the Agency a final waiver from the contractor and a Certification of Payment that all bills have been paid.
- f) The loan recipient must also submit a release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the loan, subject only to such exceptions specified in the release.
- g) Any use of loan funds at variance with this Part 365 shall result in repayment of those loan funds to the State of Illinois for deposit into the WPCLP.

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section 365.1110 Loan Repayment to the Agency

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 semi-annually unless the Agency determines that the dedicated source of revenue justifies an alternative repayment plan.

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- 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) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

Section 365.1120 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]*

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Section 365.APPENDIX A Executive Orders

Section 365.EXHIBIT A Executive Order 11625 (Repealed)

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Section 365.APPENDIX A Executive Orders

Section 365.EXHIBIT B Executive Order 12138 (Repealed)

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Section 365.APPENDIX A Executive Orders**Section 365.EXHIBIT C Executive Order 12549**

February 18, 1986, 51 F.R. 6730

DEBARMENT AND SUSPENSION

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1.

- a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.
- b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Section 2. To the extent permitted by law, Executive departments and agencies shall:

- a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.
- b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

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- c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Section 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Section 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

Section 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Section 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Section 7. The Director of the Office of Management and Budget shall report to the

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President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

THE WHITE HOUSE
February 18, 1986

RONALD REAGAN

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Section 365.APPENDIX A Executive Orders**Section 365.EXHIBIT D Executive Order 11246**EQUAL EMPLOYMENT OPPORTUNITY
EXECUTIVE ORDER 11246, AS AMENDED

Executive Order 11246 – Equal Employment Opportunity

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I – Nondiscrimination in Government Employment

Part II – Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A – Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

Subpart B – Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to

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employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event

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the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

- a) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- b) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- c) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute

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such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

- a) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

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SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

- a) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D – Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- 1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- 2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

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- 3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- 4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- 5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- 6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.
- 7) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

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SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

Subpart E – Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining

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the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

- a) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- b) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

- a) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3)

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refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

- b) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

- a) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this

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Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

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Section 365.APPENDIX B Loan Application Documents

Section 365.EXHIBIT A Loan Application Form

Applicant Information

L17# _____

1. Legal Name of Applicant: _____

2. Applicant Address: _____

Project Description: _____

Federal Employer Identification Number (FEIN)*: _____

* Submit FEIN Certification (attached)

3. Authorized Representative:

Name: _____ Title: _____

Phone: _____ Email: _____

4. Engineer:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

5. Attorney:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

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- 6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

Construction	\$
Legal/Financial	\$
Design Engineering	\$
Construction Engineering	\$
Other	\$
Contingency	\$
	<hr/>
Total	\$

7. Amount requested for loan
\$ _____

8. Loan repayment period requested (maximum term is 20 years): _____

- 20 Years
- Other (_____ number of years)

- 9. List any other proposed sources of funding in addition to loan request:

Source: _____ Amount: _____

Date Available: _____

- 10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Facilities Planning: _____
Plans and Specifications completed and submitted to Illinois

b) EPA: _____

_____ Illinois EPA Permit
c) issued: _____

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: _____
Advertise for

e) Bids: _____
Initiation of

f) Construction: _____

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- Completion of
g) Construction: _____

Loan Program Certifications

- Whereas, the application provisions for loans from the Water Pollution Control Loan Program require that the loan applicant provide the following certifications and assurances:

The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed the lesser of 5% of the total project cost or \$100,000, please provide the following information:

Amount to be provided by applicant \$ _____

Source of funds _____

- The loan applicant hereby certifies that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant certifies, to the best of its knowledge and belief, that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

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- b) Have not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

INTENT REGARDING NATIONAL FLOOD INSURANCE

Whereas application provisions for loans from the Water Pollution Control Loan Program require compliance with the National Flood Insurance Act of 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the _____ of _____ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# _____ for the entire useful life of the insurable construction pursuant to the National Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available, and will notify the Illinois

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Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

CERTIFICATION REGARDING PROJECT SITE, RIGHTS-OF-WAY, EASEMENTS, AND PERMITS

- 1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has complied with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

Table with 3 columns: Type of Permit, Permit Number, Date Issued. Rows include Army Corps of Eng. 404, IL Dept. of Trans., County Highway, and Other.

AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS

Whereas, application provisions for loans from the Water Pollution Control Loan Program require that the (name of applicant) of (address) authorize a representative to sign the loan application forms and supporting documents;

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therefore, be it resolved by
 the _____ (name of applicant) _____ of _____ (address) _____
 that _____ (name or title) _____ is hereby authorized to sign all loan
 application forms and documents.

I, _____ hereby verify that the above information is, to the best of my
 knowledge, true and correct.

Date: _____ Signed by: _____

(Authorized Representative)

Title: _____

Attested by: _____

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TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).
 - *If you are an individual, enter your name and SSN as it appears on your Social Security Card.*
 - *If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.*
 - *If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.*
 - *If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).*
 - *For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.*

Name: _____

Business Name: _____

Taxpayer Identification Number: _____

Social Security Number: _____

or

Employer Identification Number _____

Legal Status (*check one*):

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- | | |
|---|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Governmental |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident alien |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Estate or trust |
| <input type="checkbox"/> Legal Services Corporation | <input type="checkbox"/> Pharmacy (Non-Corp.) |
| <input type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.) |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or bililng medical and/or health care services | <input type="checkbox"/> D = disregarded entity |
| | <input type="checkbox"/> C = corporation |
| | <input type="checkbox"/> P = partnership |

Signature: _____

Date: _____

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Section 365.APPENDIX B Loan Application Documents

Section 365.EXHIBIT B Program Financial Requirements

Loan Applicant: _____

Loan Number: _____

Please answer or submit information indicated, as appropriate.

A. Dedicated Source of Revenue

1. Home Rule Non-Home Rule
2. Type of loan instrument
 - a. General Obligation Debt
 - b. Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of _____
 - c. Water Sewer Combined System Revenues – Senior Lien
 - d. Water Sewer Combined System Revenues – Subordinate Lien
3. Authority of applicant to issue debt
 - a. Home rule powers
 - b. Specific authorizing statute: _____ ILCS _____
 - c. Other (specify)
4. Please submit a copy of the certified ordinance authorizing the debt to be incurred, along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.
5. Please submit a signed legal opinion with respect to the validity and enforceability of the applicant's obligations (the bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.

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6. Please submit a detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.

Please complete **EITHER** Section B. or Section C. below, as appropriate:

- B. User Charge System (complete tasks if an Agency approved user charge system IS NOT in place)
 1. Please submit a detailed Operation, Maintenance and Replacement (OM&R) budget.
 2. Please provide calculations to demonstrate how the rates and surcharges are calculated. The rates should be expressed in cost per unit of usage, i.e., per 1,000 gallons, per 100 cubic feet, when appropriate).
 3. Please submit copies of certified sewer use and sewer rate ordinances.
- C. Supplemental Review (complete tasks if an Agency approved user charge system IS in place)
 1. Please provide a statement certifying that the sewer use and sewer rate ordinances originally approved are in place and being enforced. The certification should also address the following questions:
 - a. Is an annual review of the User Charge System and wastewater/other service charges being performed?
 - b. Is the User Charge System generating sufficient revenue to recover the Operation, Maintenance and Replacement (OM&R) Costs?
 - c. Will this project result in substantial changes to the costs for Operation, Maintenance and Replacement?

Include ordinance numbers and effective dates, and please reference any amendments made to the ordinances since their approval.

2. If the project will result in substantial changes in costs for Operation, Maintenance and Replacement, please submit a proposed budget for the first year OM&R costs and a

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review of wastewater/other service charges, along with necessary revisions to the rate ordinance, when appropriate.

D. Tax Exemption Certificate and Agreement

1. Please provide a signed copy of the Tax Exemption Certificate and Agreement. This document can be accessed on the Agency's website at: <http://www.epa.state.il.us/water/forms#html> financial-assistance or by calling 217/782-2027.

2. Are other entities substantially benefiting (greater than 5%) from the project?

Yes No

Please submit copies of any applicable service agreements with substantial beneficiaries.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

(Authorized Representative)

(Date)

Financial Information Requirements

Prior to the issuance of a loan agreement, the loan applicant must provide detailed and sufficient information to allow the Agency to determine that the applicant (1) is financially capable, (2) has pledged a Dedicated Source of Revenue that is adequate to retire the debt and meet any covenants and requirements in the loan agreement, and (3) has established a Sewer Use and User Charge System, when applicable, that will generate adequate revenues to repay the loan and accommodate costs for operation, maintenance and replacement of the facilities to be constructed.

These financial information requirements can generally be accomplished by completing the Financial Information Checklist above, which will necessarily involve the enactment of an ordinance or other legal instrument authorizing the debt to be incurred, and the development and enactment of an ordinance or other legal instrument establishing a User Charge System and

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Sewer Use System, when applicable. If a User Charge System has been previously approved by the Agency, evidence will be required to assure that the system has been adequately maintained, is being enforced and will continue to produce adequate revenues.

This brief summary of WPCLP loan rules, Agency review procedures, and information that must be submitted for the Agency's review is being provided along with the Financial Information Checklist above to provide guidance for potential loan recipients.

Financial Capability

The Agency will require the loan applicant to demonstrate that it has the legal, financial, managerial and institutional capability to retire the loan and to construct, operate and maintain the project for the life of the facilities to be constructed. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

The Agency's Financial Capability review will be conducted using items submitted as part of the loan application, including our review of the Dedicated Source of Revenue and the User Charge System as detailed below. If the Agency is unable to make a Financial Capability determination based on the loan application, the submission of additional financial data, including audited financial statements, may be required.

Dedicated Source of Revenue

The Agency will require that a specific source(s) of revenue be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source(s) of revenue, the applicant must demonstrate that the pledged revenue source(s) will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement, but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable. The loan applicant will be responsible for meeting all publication requirements, including publication of the Notice of Intent to Borrow Funds and Right to File a Petition, when applicable.

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- In the case of revenue bonds, the Agency will require that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system, or from other revenues that are pledged for repayment of the loan. If a sewer service charge is used, the rate ordinance and sewer rate must be adopted prior to first disbursement on the loan. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency will require the loan applicant to furnish a legal opinion verifying the legality and acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion will necessarily address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

User Charge System

The Agency will require the loan applicant to establish a User Charge System, or alternative revenue collection system that will generate adequate revenues to make loan repayments for the term of the loan and to accommodate costs for operation, maintenance and replacement of the facilities to be constructed. The establishment of a User Charge System is generally accomplished by the development and enactment of an ordinance establishing a Sewer Use and User Charge (Sewer Rate) System to govern terms and charges for use of the system. If alternative revenue sources (not system revenues) will be dedicated to the project, other appropriate legal instruments will be required to secure a revenue stream and ensure debt service on the loan.

If the applicant has a previously approved User Charge System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and that it will continue to produce adequate revenues for the proposed project.

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Section 365.APPENDIX B Loan Application Documents

Section 365.EXHIBIT C Bid Certifications Form

Loan Applicant: _____
Loan Number: _____

Please answer or submit information indicated, as appropriate.

1. Please submit evidence of advertising, including a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the WPCLP as set out in this Part 365, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], the Disadvantaged Business Enterprise program requirements (40 CFR 33) and Executive Order 11246, as amended (Appendix A, Exhibit D) (reference Section 365.620(b)(1)).
 - a) The advertisement was placed in the: _____ newspaper*

* "Key" newspaper required (reference DBE Guidance at:
<http://www.epa.state.il.us/water/forms/html#financial-assistance>)
 - b. The advertisement was placed on: _____
(date)
 - c) The date of bid opening is: _____
 - d) Bid holding period is: _____ days

2. Please submit the bid tabulation and the selected bidder's proposal (bid form only) reflecting any addenda issued during the bidding period (reference Section 365.620(b)).
 - a. Number of bids received: _____
 - b. Low/High range for base bids: _____ to _____
 - c. Is the loan recipient awarding to the lowest responsive, responsible bidder?

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Yes No

If not, please submit justification disqualifying the apparent lowest bidder (reference Section 365.620(b)(4)(C)).

- d. Are there appeals or protests? Please answer yes or no: _____
3. Please list and provide a summary of any addenda issued during the bidding period. The summary should reflect any change to major equipment or suppliers in the proposal and any alternates (deductive/additive) to be used in the project. Please include a statement that applicable addenda and alternates (deductive/additive) have been approved by the Agency's Permit Section.
 4. Please submit the consultant's analysis of bids and recommendation for award (reference Section 365.620(b)(2)(c)).
 5. Please submit the loan applicant's letter of intent to award or the official minutes of board approval for the award (reference Section 365.620(b)(4)(A)).
 6. Please submit a summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33. Guidance for loan applicants on DBE requirements can be found on the Agency's website at <http://www.epa.state.il.us/water/forms.html#financial-assistance>. At a minimum, the loan applicant shall submit completed and signed copies of Forms 6100-3 (DBE Subcontractor Performance Form) and 6100-4 (DBE Subcontractor Utilization Form) if DBE inquiries are received on the project.
 7. Bid Certifications – By submission of these bids and by certification provided hereunder, the loan applicant certifies that, to the best of its knowledge and belief, it and its principals have read and understand the various requirements pertaining to bids as embodied in these loan rules and that the specific certifications detailed below are provided by submission of these bids.
 8. Contractor Certifications – Completed copies of three additional certifications must be executed by the selected contractor and submitted by the loan applicant, including a Certification of Non-Segregated Facilities, a Bidder Certification in Compliance with Article 33E to the "Criminal Code of 1961" and a Certification Regarding Debarment, Suspension and Other Responsibility Matters. Forms acceptable for this purpose are provided in this package below.

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Bid Certifications

- The loan applicant hereby certifies that the bidding documents include: a complete statement of the work to be performed, including necessary drawings and a required completion schedule; the terms and conditions of the contract to be awarded; a clear explanation of the method of bidding, the method for evaluation of bid prices and the basis and method for award of the contract; a 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; and a summary of responsibility requirements or criteria that may be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient.
- The loan applicant hereby certifies that the certifications contained in Section 365.620(b)(2)(G) and (H) in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid.
- The loan applicant hereby certifies that the proposal is consistent with approved specifications in terms of quantity, description and eligibility.
- The loan applicant hereby certifies that any addenda issued during the bidding period were distributed to all prospective bidders and approved by the Agency.
- The loan applicant hereby certifies that a bid bond or cashier's check for not less than five percent (5%) of the bid amount and signed power of attorney is provided (reference Section 365.620(a)).
- The loan applicant hereby certifies that any change to major equipment or suppliers in the proposal has been approved by the Agency (Permit Section), that alternates (deductive/additive) taken have been approved by the Agency (Permit Section) and that an approved Permit _____ is in place for the project.

- The loan applicant hereby certifies that a list of all subcontractors being utilized on the project will be maintained in the project file and made available for

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inspection upon request. The subcontractors list should include a name, address and telephone number for all subcontractors being used.

I hereby certify that the above information, including all certifications provided to comply with the procedures for issuing loans from the WPCLP, is, to the best of my knowledge, true and accurate.

(Authorized Representative)

(Date)

Contractor Certifications

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CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 that are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he or she does not maintain or provide for his or her employees any segregated facilities at any of his or her establishments, and that he or she does not permit his or her employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he or she will not maintain or provide for his or her employees any segregated facilities at any of his or her establishments, and that he or she will not permit his or her employees to perform their services at any location, under his or her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. The federally assisted construction contractor agrees that (except when he or she has obtained identical certifications from proposed subcontractors for specific time periods) he or she will obtain identical certifications from

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proposed subcontractors prior to the award of subcontracts exceeding \$10,000 that are not exempt from the provisions of the Equal Opportunity clause, and that he or she will retain such certification in his or her files.

Signature Date

Name and Title of Signer (Please type)

Firm Name

NOTE: The penalty for making false statements in offers is prescribed in 18 USC 1001.

Bidder Certification
In Compliance with Article 33E to the
Criminal Code of 1961

I, _____, do hereby certify that:
Name

1. I am _____ of the _____
Position Firm
and have authority to execute this certification on behalf of the firm.

2. This firm is not barred from bidding on this contract as a result of a violation of either Section 33E-3, Bid-rigging, or Section 33E-4, Bid Rotating, as set forth in Article 33E to the Criminal Code of 1961.

Name of Firm _____

Signature _____

Title _____

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Date _____

Corporate Seal (when appropriate)

On this _____ day of _____, 20____, before me appeared _____ to me personally known, who, being
(Name)

duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so
(Name of Firm)

as his or her free act and deed.

(Notary Public)

(Commission Expires)

Notary Seal

EPA Project Control #: _____

United States Environmental Protection Agency
Washington DC 20460

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant certifies, to the best of its knowledge and belief, that it and its principals:

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- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b) Have not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

(Typed Name & Title of Authorized Representative)

(Signature of Authorized Representative)

(Date)

_____ I am unable to certify the above statements. My explanation is attached.

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- 1) Heading of the Part: Procedures for Issuing Loans From the Water Pollution Control Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 365
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
365.105	New Section
365.110	New Section
365.120	New Section
365.130	New Section
365.140	New Section
365.150	New Section
365.160	New Section
365.170	New Section
365.210	New Section
365.220	New Section
365.240	New Section
365.250	New Section
365.260	New Section
365.310	New Section
365.320	New Section
365.330	New Section
365.340	New Section
365.350	New Section
365.410	New Section
365.420	New Section
365.430	New Section
365.440	New Section
365.450	New Section
365.460	New Section
365.470	New Section
365.510	New Section
365.520	New Section
365.530	New Section
365.540	New Section
365.610	New Section
365.620	New Section
365.630	New Section
365.640	New Section

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365.650 New Section
365.660 New Section
365.670 New Section

- 4) Statutory Authority: Implementing and authorized by Sections 19.1 through 19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1 through 19.9]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed rules reorganize and update the Illinois EPA's previous rules governing the Water Pollution Control Loan Program. The new proposed rules include provisions for the financing of stormwater treatment systems, reducing fixed loan rates for small and hardship communities and projects meeting environmental impact criteria, and restructuring of existing loan obligations. The proposed rules update the Illinois EPA's previous affordability criteria for principal forgiveness, and authorize 30-year loan terms for public loan applicants that qualify for small community or hardship community fixed loan rates.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking will not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

Rex L. Gradeless
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield IL 62794-9276

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217/782-5544
Rex.Gradeless@Illinois.Gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small businesses, small municipalities or not-for-profit corporations seeking loans under the Water Pollution Control Loan Program could be affected.
 - B) Reporting, bookkeeping or other procedures required for compliance: New reporting requirements and procedures are required for those seeking to restructure an existing loan obligation under Section 365.240.
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: 40 Ill. Reg. 1260; January 15, 2016

The full text of the Proposed Rules begins on the next page:

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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

SUBPART A: INTRODUCTION

Section	
365.105	Purpose
365.110	Definitions
365.120	Administration
365.130	Projects and Activities Available for Assistance
365.140	Types of Assistance
365.150	Other Federal Requirements
365.160	Application Process
365.170	Waiver of Procedures

SUBPART B: FINANCING TERMS

Section	
365.210	Fixed Loan Rate
365.220	Loan Repayment Period
365.240	Restructuring
365.250	Principal Forgiveness
365.260	Limitations on Loan Assistance

SUBPART C: LOAN APPLICATION PROCESS

Section	
365.310	Funding Nomination Form
365.320	Project Plan
365.330	State Environmental Review
365.340	Project Priority List
365.350	Securing the Loan Agreement

SUBPART D: LOAN ISSUANCE, AUDITING, AND RECORDKEEPING

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Section

365.410	Loan Issuance
365.420	Post-Loan Issuance Construction Contract Requirements
365.430	Loan Eligible Costs
365.440	Disbursement of Loan Funds
365.450	Initiation of Loan Repayment
365.460	Loan Closing and Issuance of Final Loan Amendment
365.470	Ongoing Auditing and Monitoring of Financial Capability

SUBPART E: DELINQUENT LOAN REPAYMENTS AND NONCOMPLIANCE

Section

365.510	Delinquent Loan Repayments
365.520	Noncompliance with Loan Procedures
365.530	Stop-Work Order
365.540	Termination

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section

365.610	Requirements for Subagreements
365.620	Construction Contracts
365.630	Contracts for Personal and Professional Services
365.640	Compliance with Procurement Requirements for Construction Contracts
365.650	Disputes
365.660	Indemnity
365.670	Covenant Against Contingent Fees

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

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Part repealed at 40 Ill. Reg. _____ and new Part adopted at 40 Ill. Reg. _____, effective _____.

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, 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, as amended.
- b) For the purposes of this Part, the following definitions apply:

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.

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Change Order – A written order by the loan recipient to the contractor authorizing 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 that 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. That revenue source shall be 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:

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.

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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 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.

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 features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduces overall imperviousness in a watershed. On a

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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 from the Capitalization Grant, that are required to be documented 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)]

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.

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

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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:

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 the 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.

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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 State fiscal 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.

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.

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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 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.

Source of Revenue – All revenues of the loan applicant that are sufficient to repay the principal and interest (as calculated by the fixed loan rate) on the loan.

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.

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Title VI – Title VI of the federal Clean Water Act.

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.

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.

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WPCLP – 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) 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;
 - 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;

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- 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 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 (75 USC 31);
- N) to require public loan recipients to study the cost and effectiveness of the process, materials, techniques and technologies for carrying

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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) The Agency shall prepare an Intended Use Plan annually.
 - 2) The Intended Use Plan shall 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 Part;
 - E) the criteria and the method for distribution of the State Water Revolving Fund funds under this Part;
 - F) assurances and specific proposals on the manner by which the Agency intends to meet 40 CFR 35.3135(c), (d), (e) and (f), and 35.3140.

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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;
- k) to any qualified nonprofit entity, as determined by the 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

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activities; and

- 2) to assist the treatment works in achieving compliance with this Chapter.

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;
 - 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

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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 when that 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 of the State, if the proceeds of those 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)];*
- i) *to transfer funds to the Public Water Supply Loan Program [415 ILCS 5/19.3(b)(7)]; and*

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- 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:
- 1) the loan applicant submits a Funding Nomination Form pursuant to Section 365.310;

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- 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) The following 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);
 - 7) Section 365.350(a)(10) (Ability to Repay);

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- 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 3 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 3 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

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beyond the initiation of the loan repayment period, or the projected useful life of the project to be financed with proceeds of the loan.

- 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 subsequent 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

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Section 365.350(a)(9) through (a)(13).

- b) The applicant must resubmit all financial and managerial capability documentation required under Section 365.350(a)(9) through (a)(13), and the restructured loan shall 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

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assistance under 33 USC 1383(c)(1) that meets the affordability criteria of subsection (b).

b) Affordability Criteria

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

Points	MHI as % of Statewide MHI
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

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Points	Service Population
5	20,000-30,000
10	15,000-19,999
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%

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- 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:
- 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 shall 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 shall 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;

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- B) contact information; and
 - C) authorized representative – name and title;
- 2) Project Information
- A) project description;
 - B) cost; and
 - C) project implementation schedule.
- b) The first submittal of the Funding Nomination Form shall be submitted with a Project Plan as described in Section 365.320.
- c) To ensure placement on the annual Project Priority List, loan applicants seeking financial assistance during any fiscal year commencing July 1 shall resubmit a Funding Nomination Form required under subsection (a) by the preceding January 31. All resubmitted Funding Nomination Forms shall include all applicable updates.

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.

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- 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;
 - 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

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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, including, at a minimum, comments from the Illinois Historic Preservation Agency and the Illinois Department of Natural Resources;
 - 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the 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:

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- 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.

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

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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

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 PEID shall be sent 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 sufficiently 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.

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- 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 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- 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 shall 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.
- f) Agency project planning determinations made in accordance with subsections (b) and (c) shall be subject to the Illinois Administrative Procedure Act [5 ILCS 100].

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

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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.
- 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)).

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- 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.

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 shall 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;

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- 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 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:
 - A) For 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

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- B) For 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;
 - 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

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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, 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;
- E) For nonpublic loan applicants, approval from the Illinois Commerce Commission to incur debt, if applicable;
- F) The Agency may also utilize available credit reporting services; and

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- G) 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.
- 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.);
 - 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;

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- 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 33 E-11 of the Illinois Criminal Code of 2012 [720 ILCS 5/33E-11];
 - B) Each person signing the bid shall certify that:
 - 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

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participated, and will not participate, in any action contrary to subsection (d)(6)(A), and as their 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:
 - 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 276a through 276a-5) as defined by the US Department of Labor;

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- C) the Employment of Illinois Workers on Public Works Act [30 ILCS 570];
 - D) the use of American Iron and Steel pursuant to the Consolidated Appropriations Act of 2014 (PL 113-235);
 - 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;
 - 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

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- 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.
- 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.

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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:
 - i) alterations in design scope that require a modification to a construction permit; or

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- 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 prior to the award of the construction contract.

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- B) The project meets the definition of a compliance project in accordance with Section 365.110.
 - 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:
 - 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 276a through 276a-5), 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 that are properly allocable to costs for which loan funds have been disbursed must

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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 semi-annually 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

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National Flood Insurance Act of 1968, as amended, and maintain 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 shall be an eligible project cost under Section 365.430 (Loan Eligible Costs).
- 5) 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 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:

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- 1) review and determine the final total and eligible costs;
 - 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 and 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).

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- 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 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

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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.

- 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 re-examine 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).*
- b) *In the event that a loan recipient fails to comply with subsection (a), 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), 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*

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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

- 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.

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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:

- 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 cancelled 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);

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- 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 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

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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.
- 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, including 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.

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- 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
 - C) the basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractor 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;

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- 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 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;

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- 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.

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.

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- 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 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

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- 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**
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 276a through 276a-5), as defined by the US Department of Labor.
- 4) **Disadvantaged Business Enterprise Requirements**
The contractor shall provide evidence, including, but not limited to, a copy of the advertisement or advertisements and the record of negotiation, 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.

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- 5) **Debarment and Suspension Provisions**
The contract shall require the successful bidder or 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 as prescribed by 18 USC 1001.
 - 7) **American Iron and Steel**
The successful bidder shall be required to use American Iron and Steel pursuant to the Water Resources Reform and Development Act (PL 113-121).
 - 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 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

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- 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:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with 40 CFR 33, that affirmative steps have been taken 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

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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.
- 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

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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 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

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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 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 this provision, with respect to its subagreements. Neither a

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contractor nor a subcontractor may prosecute an appeal under the disputes provision 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 clause 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, 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.

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- 1) Heading of the Part: Temporary Assistance for Needy Families
- 2) Code Citation: 89 Ill. Adm. Code 112
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
112.78	Amendment
112.110	Amendment
- 4) Statutory Authority: Implementing Article IV and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. IV and 12-13], PA 99-746 and PA 99-899
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking revises core activity requirements for TANF adult clients and increases the child support disregard.

Revise Core Activity Requirements for TANF Adult Clients

Currently, a minor parent age 19 or under who has not completed secondary school or received his or her high school equivalency certificate is required to attend secondary school or a high school equivalency program. The client must make satisfactory progress as defined by a passing grade. Grades must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months. If it is determined that secondary school is inappropriate or not the best option for an 18 or 19 year old parent, the 18 or 19 year old parent may be assigned to work activities or training.

As a result of PA 99-746, adults without a high school degree will now be allowed to attend high school or participate in a high school equivalency program and have it count towards their core work activity requirement. DHS caseworkers will now be able to place TANF adult clients in need of a high school degree or a high school equivalency certificate in a program that will be most helpful to the client. This requirement change is expected to have a positive impact on TANF adult clients because clients with a high school equivalency certificate will likely achieve employment earlier and earn a higher rate of pay than persons without a high school equivalency certificate. Obtaining a high school equivalency certificate will allow needy families to achieve self-sufficiency in a more efficient manner.

Increase Child Support Disregard

Currently, a child support payment made to a TANF customer by the Department is exempted for the first \$50 or any lesser amount collected in a month when a determination of eligibility and level of assistance is made. As a result of PA 99-899,

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effective January 1, 2017, the first \$100 of child support collected on behalf of a family in a month for one child and the first \$200 of child support collected on behalf of a family in a month for two or more children will be exempted and passed through to the family and disregarded in determining the amount of the TANF assistance grant provided to the family. Any amount of child support that is disregarded in determining the amount of the TANF assistance grant will also be disregarded in determining eligibility for TANF cash assistance.

As a result of this rulemaking, TANF families may have an increase in their benefit amount due to the higher disregard of their child support income, when the calculation of their benefit amount is made. In addition, clients that previously may not have been eligible before may now qualify for TANF.

- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking? None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? None
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this rulemaking: Interested persons may present their comments concerning these rules within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

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217/785-9772

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because it was not anticipated by the Department when those agendas were published.

The full text of the Proposed Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMSPART 112
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

SUBPART A: GENERAL PROVISIONS

Section

112.1	Description of the Assistance Program and Time Limit
112.2	Time Limit on Receipt of Benefits for Clients Enrolled in Post-Secondary Education
112.3	Receipt of Cash Benefits Beyond the 60 Month Lifetime Limit
112.5	Incorporation by Reference
112.6	The Family Violence Option

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section

112.8	Caretaker Relative
112.9	Client Cooperation
112.10	Citizenship
112.20	Residence
112.30	Age
112.40	Relationship
112.50	Living Arrangement
112.52	Social Security Numbers
112.54	Assignment of Medical Support Rights
112.55	Electronic Benefits Transfer (EBT) Restrictions
112.60	Basis of Eligibility
112.61	Death of a Parent (Repealed)
112.62	Incapacity of a Parent (Repealed)
112.63	Continued Absence of a Parent (Repealed)
112.64	Unemployment of the Parent (Repealed)
112.65	Responsibility and Services Plan
112.66	Alcohol and Substance Abuse Treatment
112.67	Restriction in Payment to Households Headed by a Minor Parent
112.68	School Attendance Initiative

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112.69 Felons and Violators of Parole or Probation

SUBPART C: TANF EMPLOYMENT AND WORK ACTIVITY REQUIREMENTS

Section

112.70 Employment and Work Activity Requirements
112.71 Individuals Exempt from TANF Employment and Work Activity Requirements
112.72 Participation/Cooperation Requirements
112.73 Adolescent Parent Program (Repealed)
112.74 Responsibility and Services Plan
112.75 Teen Parent Personal Responsibility Plan (Repealed)
112.76 TANF Orientation
112.77 Reconciliation and Fair Hearings
112.78 TANF Employment and Work Activities
112.79 Sanctions
112.80 Good Cause for Failure to Comply with TANF Participation Requirements
112.81 Responsible Relative Eligibility for JOBS (Repealed)
112.82 Supportive Services
112.83 Teen Parent Services
112.84 Employment Retention and Advancement Project
112.85 Four Year College/Vocational Training Demonstration Project (Repealed)

SUBPART E: PROJECT ADVANCE

Section

112.86 Project Advance (Repealed)
112.87 Project Advance Experimental and Control Groups (Repealed)
112.88 Project Advance Participation Requirements of Experimental Group Members and Adjudicated Fathers (Repealed)
112.89 Project Advance Cooperation Requirements of Experimental Group Members and Adjudicated Fathers (Repealed)
112.90 Project Advance Sanctions (Repealed)
112.91 Good Cause for Failure to Comply with Project Advance (Repealed)
112.93 Individuals Exempt From Project Advance (Repealed)
112.95 Project Advance Supportive Services (Repealed)

SUBPART F: EXCHANGE PROGRAM

Section

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112.98 Exchange Program (Repealed)

SUBPART G: FINANCIAL FACTORS OF ELIGIBILITY

Section

112.100	Unearned Income
112.101	Unearned Income of Parent
112.105	Budgeting Unearned Income
112.106	Budgeting Unearned Income of Applicants
112.107	Initial Receipt of Unearned Income
112.108	Termination of Unearned Income
112.110	Exempt Unearned Income
112.115	Education Benefits
112.120	Incentive Allowances
112.125	Unearned Income In-Kind
112.126	Earmarked Income
112.127	Lump-Sum Payments
112.128	Protected Income (Repealed)
112.130	Earned Income
112.131	Earned Income Tax Credit
112.132	Budgeting Earned Income
112.133	Budgeting Earned Income of Employed Applicants
112.134	Initial Employment
112.135	Budgeting Earned Income For Contractual Employees
112.136	Budgeting Earned Income For Non-contractual School Employees
112.137	Termination of Employment
112.138	Transitional Payments (Repealed)
112.140	Exempt Earned Income
112.141	Earned Income Exemption
112.142	Exclusion from Earned Income Exemption
112.143	Recognized Employment Expenses
112.144	Income from Work-Study and Training Programs
112.145	Earned Income From Self-Employment
112.146	Earned Income From Roomer and Boarder
112.147	Income From Rental Property
112.148	Payments from the Illinois Department of Children and Family Services
112.149	Earned Income In-Kind
112.150	Assets
112.151	Exempt Assets (Repealed)

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- 112.152 Asset Disregards (Repealed)
- 112.153 Deferral of Consideration of Assets (Repealed)
- 112.154 Property Transfers (Repealed)
- 112.155 Income Limit
- 112.156 Assets for Independence Program

SUBPART H: PAYMENT AMOUNTS

- Section
- 112.250 Grant Levels
- 112.251 Payment Levels
- 112.252 Payment Levels in Group I Counties
- 112.253 Payment Levels in Group II Counties
- 112.254 Payment Levels in Group III Counties
- 112.255 Limitation on Amount of TANF Assistance to Recipients from Other States (Repealed)

SUBPART I: OTHER PROVISIONS

- Section
- 112.300 Persons Who May Be Included in the Assistance Unit
- 112.301 Presumptive Eligibility
- 112.302 Reporting Requirements for Clients with Earnings
- 112.303 Budgeting
- 112.304 Budgeting Schedule
- 112.305 Strikers
- 112.306 Foster Care Program
- 112.307 Responsibility of Sponsors of Non-Citizens Entering the Country Prior to 8/22/96
- 112.308 Responsibility of Sponsors of Non-Citizens Entering the Country On or After 8/22/96
- 112.309 Institutional Status
- 112.310 Child Care for Representative Payees
- 112.315 Young Parents Program (Renumbered)
- 112.320 Redetermination of Eligibility
- 112.330 Extension of Medical Assistance Due to Increased Income from Employment
- 112.331 Four Month Extension of Medical Assistance Due to Child Support Collections
- 112.332 Extension of Medical Assistance Due to Loss of Earned Income Disregard (Repealed)
- 112.340 New Start Payments to Individuals Released from Department of Corrections

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Facilities (Repealed)

SUBPART J: CHILD CARE

Section

112.350	Child Care (Repealed)
112.352	Child Care Eligibility (Repealed)
112.354	Qualified Provider (Repealed)
112.356	Notification of Available Services (Repealed)
112.358	Participant Rights and Responsibilities (Repealed)
112.362	Additional Service to Secure or Maintain Child Care Arrangements (Repealed)
112.364	Rates of Payment for Child Care (Repealed)
112.366	Method of Providing Child Care (Repealed)
112.370	Non-JOBS Education and Training Program (Repealed)

SUBPART K: TRANSITIONAL CHILD CARE

Section

112.400	Transitional Child Care Eligibility (Repealed)
112.404	Duration of Eligibility for Transitional Child Care (Repealed)
112.406	Loss of Eligibility for Transitional Child Care (Repealed)
112.408	Qualified Child Care Providers (Repealed)
112.410	Notification of Available Services (Repealed)
112.412	Participant Rights and Responsibilities (Repealed)
112.414	Child Care Overpayments and Recoveries (Repealed)
112.416	Fees for Service for Transitional Child Care (Repealed)
112.418	Rates of Payment for Transitional Child Care (Repealed)

AUTHORITY: Implementing Article IV and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. IV and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amendment at 3 Ill. Reg. 33, p. 415, effective August 18,

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1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; preemptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; preemptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; preemptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; preemptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; preemptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; preemptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; preemptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; preemptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; preemptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; rules repealed, new rules adopted and codified at 7 Ill. Reg. 907, effective January 11, 1983; rules repealed and new rules adopted and codified at 7 Ill. Reg. 2720, effective February 28, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 11284, effective August 26, 1983; amended at 7 Ill. Reg. 13920, effective October 7, 1983; amended at 7 Ill. Reg. 15690, effective November 9, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16105; amended at 7 Ill. Reg. 17344, effective

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December 21, 1983; amended at 8 Ill. Reg. 213, effective December 27, 1983; emergency amendment at 8 Ill. Reg. 569, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4176, effective March 19, 1984; amended at 8 Ill. Reg. 5207, effective April 9, 1984; amended at 8 Ill. Reg. 7226, effective May 16, 1984; amended at 8 Ill. Reg. 11391, effective June 27, 1984; amended at 8 Ill. Reg. 12333, effective June 29, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17894; peremptory amendment at 8 Ill. Reg. 18127, effective October 1, 1984; peremptory amendment at 8 Ill. Reg. 19889, effective October 1, 1984; amended at 8 Ill. Reg. 19983, effective October 3, 1984; emergency amendment at 8 Ill. Reg. 21666, effective October 19, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21621, effective October 23, 1984; amended at 8 Ill. Reg. 25023, effective December 19, 1984; amended at 9 Ill. Reg. 282, effective January 1, 1985; amended at 9 Ill. Reg. 4062, effective March 15, 1985; amended at 9 Ill. Reg. 8155, effective May 17, 1985; emergency amendment at 9 Ill. Reg. 10094, effective June 19, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11317, effective July 5, 1985; amended at 9 Ill. Reg. 12795, effective August 9, 1985; amended at 9 Ill. Reg. 15887, effective October 4, 1985; amended at 9 Ill. Reg. 16277, effective October 11, 1985; amended at 9 Ill. Reg. 17827, effective November 18, 1985; emergency amendment at 10 Ill. Reg. 354, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 1172, effective January 10, 1986; amended at 10 Ill. Reg. 3641, effective January 30, 1986; amended at 10 Ill. Reg. 4885, effective March 7, 1986; amended at 10 Ill. Reg. 8118, effective May 1, 1986; amended at 10 Ill. Reg. 10628, effective June 1, 1986; amended at 10 Ill. Reg. 11017, effective June 6, 1986; Sections 112.78 through 112.86 and 112.88 recodified to 89 Ill. Adm. Code 160 at 10 Ill. Reg. 11928; emergency amendment at 10 Ill. Reg. 12107, effective July 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 12650, effective July 14, 1986; amended at 10 Ill. Reg. 14681, effective August 29, 1986; amended at 10 Ill. Reg. 15101, effective September 5, 1986; amended at 10 Ill. Reg. 15621, effective September 19, 1986; amended at 10 Ill. Reg. 21860, effective December 12, 1986; amended at 11 Ill. Reg. 2280, effective January 16, 1987; amended at 11 Ill. Reg. 3140, effective January 30, 1987; amended at 11 Ill. Reg. 4682, effective March 6, 1987; amended at 11 Ill. Reg. 5223, effective March 11, 1987; amended at 11 Ill. Reg. 6228, effective March 20, 1987; amended at 11 Ill. Reg. 9927, effective May 15, 1987; amended at 11 Ill. Reg. 12003, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 12432, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 12908, effective July 30, 1987; emergency amendment at 11 Ill. Reg. 12935, effective August 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13625, effective August 1, 1987; amended at 11 Ill. Reg. 14755, effective August 26, 1987; amended at 11 Ill. Reg. 18679, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 18781, effective November 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20114, effective December 4, 1987; Sections 112.90 and 112.95 recodified to Sections 112.52 and 112.54 at 11 Ill. Reg. 20610; amended at 11 Ill. Reg. 20889, effective December 14, 1987; amended at 12 Ill. Reg. 844, effective January 1, 1988; emergency

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amendment at 12 Ill. Reg. 1929, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 2126, effective January 12, 1988; SUBPARTS C, D and E recodified to SUBPARTS G, H and I at 12 Ill. Reg. 2136; amended at 12 Ill. Reg. 3487, effective January 22, 1988; amended at 12 Ill. Reg. 6159, effective March 18, 1988; amended at 12 Ill. Reg. 6694, effective March 22, 1988; amended at 12 Ill. Reg. 7336, effective May 1, 1988; amended at 12 Ill. Reg. 7673, effective April 20, 1988; amended at 12 Ill. Reg. 9032, effective May 20, 1988; amended at 12 Ill. Reg. 10481, effective June 13, 1988; amended at 12 Ill. Reg. 14172, effective August 30, 1988; amended at 12 Ill. Reg. 14669, effective September 16, 1988; amended at 13 Ill. Reg. 70, effective January 1, 1989; amended at 13 Ill. Reg. 6017, effective April 14, 1989; amended at 13 Ill. Reg. 8567, effective May 22, 1989; amended at 13 Ill. Reg. 16006, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16142, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 14 Ill. Reg. 705, effective January 1, 1990; amended at 14 Ill. Reg. 3170, effective February 13, 1990; amended at 14 Ill. Reg. 3575, effective February 23, 1990; amended at 14 Ill. Reg. 6306, effective April 16, 1990; amended at 14 Ill. Reg. 10379, effective June 20, 1990; amended at 14 Ill. Reg. 13652, effective August 10, 1990; amended at 14 Ill. Reg. 14140, effective August 17, 1990; amended at 14 Ill. Reg. 16937, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 338, effective January 1, 1991, for a maximum of 150 days; emergency amendment at 15 Ill. Reg. 2862, effective February 4, 1991, for a maximum of 150 days; emergency expired July 4, 1991; amended at 15 Ill. Reg. 5275, effective April 1, 1991; amended at 15 Ill. Reg. 5684, effective April 10, 1991; amended at 15 Ill. Reg. 11127, effective July 19, 1991; amended at 15 Ill. Reg. 11447, effective July 25, 1991; amended at 15 Ill. Reg. 14227, effective September 30, 1991; amended at 15 Ill. Reg. 17308, effective November 18, 1991; amended at 16 Ill. Reg. 9972, effective June 15, 1992; amended at 16 Ill. Reg. 11550, effective July 15, 1992; emergency amendment at 16 Ill. Reg. 11652, effective July 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 13629, effective September 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 17724, effective November 9, 1992; amended at 16 Ill. Reg. 20147, effective December 14, 1992; amended at 17 Ill. Reg. 357, effective December 24, 1992; amended at 17 Ill. Reg. 813, effective January 15, 1993; amended at 17 Ill. Reg. 2253, effective February 15, 1993; amended at 17 Ill. Reg. 4312, effective March 25, 1993; emergency amendment at 17 Ill. Reg. 6325, effective April 9, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 6792, effective April 21, 1993; amended at 17 Ill. Reg. 15017, effective September 3, 1993; amended at 17 Ill. Reg. 19156, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 19696, effective November 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 5909, effective March 31, 1994; amended at 18 Ill. Reg. 6994, effective April 27, 1994; amended at 18 Ill. Reg. 8703, effective June 1, 1994; amended at 18 Ill. Reg. 10774, effective June 27, 1994; amended at 18 Ill. Reg. 12805, effective August 5, 1994; amended at 18 Ill. Reg. 15774, effective October 17, 1994; expedited correction at 19 Ill. Reg. 998, effective October 17, 1994; amended at 19 Ill. Reg. 2845, effective February 24, 1995; amended at 19 Ill. Reg. 5609,

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effective March 31, 1995; amended at 19 Ill. Reg. 7883, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 10206, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 12011, effective August 7, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 12664, effective September 1, 1995; emergency amendment at 19 Ill. Reg. 15244, effective November 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15661, effective November 3, 1995; emergency amendment at 19 Ill. Reg. 15839, effective November 15, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 16295, effective December 1, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 845, effective January 1, 1996; amended at 20 Ill. Reg. 3538, effective February 15, 1996; amended at 20 Ill. Reg. 5648, effective March 30, 1996; amended at 20 Ill. Reg. 6018, effective April 12, 1996; amended at 20 Ill. Reg. 6498, effective April 29, 1996; amended at 20 Ill. Reg. 7892, effective June 1, 1996; emergency amendment at 20 Ill. Reg. 12499, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14820, effective November 1, 1996; amendment at 20 Ill. Reg. 15983, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 662, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 940, effective January 7, 1997; amended at 21 Ill. Reg. 1366, effective January 15, 1997; amended at 21 Ill. Reg. 2655, effective February 7, 1997; amended at 21 Ill. Reg. 7391, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 8426, effective July 1, 1997, for a maximum of 150 days; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 21 Ill. Reg. 15597, effective November 26, 1997; emergency amendment at 22 Ill. Reg. 4466, effective February 24, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12197, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 14420, effective July 24, 1998; amended at 22 Ill. Reg. 14744, effective August 1, 1998; amended at 22 Ill. Reg. 16256, effective September 1, 1998; emergency amendment at 22 Ill. Reg. 16365, effective September 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 18082, effective October 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19840, effective November 1, 1998; emergency amendment at 23 Ill. Reg. 598, effective January 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 942, effective January 6, 1999; emergency amendment at 23 Ill. Reg. 1133, effective January 7, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 1682, effective January 20, 1999; emergency amendment at 23 Ill. Reg. 5881, effective May 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 6958, effective May 30, 1999; amended at 23 Ill. Reg. 7091, effective June 4, 1999; amended at 23 Ill. Reg. 7896, effective July 1, 1999; emergency amendment at 23 Ill. Reg. 8672, effective July 13, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 10530, effective August 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 12648, effective September 27, 1999; amended at 23 Ill. Reg. 13898, effective November 19, 1999; amended at 24 Ill. Reg. 289, effective December 28, 1999; amended at 24 Ill. Reg. 2348, effective February 1, 2000; amended at 25 Ill. Reg. 10336, effective August 3, 2001; emergency amendment at 25 Ill. Reg. 11584, effective September 1, 2001, for a maximum of 150 days;

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amended at 25 Ill. Reg. 14865, effective November 1, 2001; amended at 26 Ill. Reg. 138, effective January 1, 2002; amended at 26 Ill. Reg. 924, effective January 15, 2002; emergency amendment at 26 Ill. Reg. 3329, effective February 19, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9803, effective June 24, 2002; amended at 26 Ill. Reg. 10492, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 10994, effective July 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 17182, effective November 15, 2002; amended at 27 Ill. Reg. 4545, effective February 28, 2003; amended at 27 Ill. Reg. 7240, effective April 7, 2003; amended at 27 Ill. Reg. 18417, effective November 20, 2003; amended at 28 Ill. Reg. 1090, effective December 31, 2003; amended at 28 Ill. Reg. 5655, effective March 22, 2004; amended at 29 Ill. Reg. 5473, effective April 1, 2005; amended at 29 Ill. Reg. 8161, effective May 18, 2005; emergency amendment at 29 Ill. Reg. 16008, effective October 4, 2005, for a maximum of 150 days; emergency expired March 2, 2006; amended at 30 Ill. Reg. 9331, effective May 8, 2006; amended at 30 Ill. Reg. 11202, effective June 12, 2006; amended at 31 Ill. Reg. 6968, effective April 30, 2007; amended at 31 Ill. Reg. 10462, effective July 6, 2007; amended at 31 Ill. Reg. 15080, effective October 24, 2007; amended at 32 Ill. Reg. 2767, effective February 7, 2008; emergency amendment at 32 Ill. Reg. 10607, effective July 1, 2008, for a maximum of 150 days; emergency expired November 27, 2008; amended at 32 Ill. Reg. 17167, effective October 20, 2008; peremptory amendment at 32 Ill. Reg. 18051, effective November 15, 2008; emergency amendment at 33 Ill. Reg. 4977, effective March 19, 2009, for a maximum of 150 days; emergency expired August 15, 2009; emergency amendment at 33 Ill. Reg. 7320, effective May 21, 2009, for a maximum of 150 days; emergency expired October 17, 2009; amended at 33 Ill. Reg. 12763, effective September 8, 2009; amended at 33 Ill. Reg. 13831, effective September 17, 2009; amended at 33 Ill. Reg. 16828, effective November 30, 2009; emergency amendment at 34 Ill. Reg. 6930, effective May 1, 2010, for a maximum of 150 days; emergency expired September 27, 2010; amended at 34 Ill. Reg. 10085, effective July 1, 2010; amended at 35 Ill. Reg. 998, effective December 28, 2010; emergency amendment at 35 Ill. Reg. 6933, effective April 6, 2011, for a maximum of 150 days; emergency expired September 2, 2011; amended at 35 Ill. Reg. 17082, effective October 5, 2011; amended at 35 Ill. Reg. 18739, effective October 28, 2011; amended at 36 Ill. Reg. 15120, effective September 28, 2012; emergency amendment at 37 Ill. Reg. 15388, effective September 9, 2013, for a maximum of 150 days; amended at 38 Ill. Reg. 4441, effective January 29, 2014; amended at 38 Ill. Reg. 17603, effective August 8, 2014; amended at 38 Ill. Reg. 18646, effective August 29, 2014; amended at 39 Ill. Reg. 15563, effective December 1, 2015; amended at 40 Ill. Reg. _____, effective _____.

SUBPART C: TANF EMPLOYMENT AND WORK ACTIVITY REQUIREMENTS

Section 112.78 TANF Employment and Work Activities

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- a) Education Directly Related to Employment
Adult clients who have not received a high school diploma or GED and need further education to obtain a specific occupation, job, or job offer are placed in this program. It consists of Adult Basic Education (ABE), ~~General Equivalency Diploma (GED)~~, and English-as-a-Second-Language (ESL) programs. Clients may be required, in coordination with the education schedule, to participate in Job Readiness activities, job skills training, Job Search, and/or Work Experience at the same time they are attending the education/training program to the extent resources will allow.
- 1) Assignment to Education Directly Related to Employment
- A) Individuals to be assigned to Education may include but are not limited to individuals:
- i) ~~who do not have a high school degree or equivalent;~~
- ii) who have limited English proficiency; and
- ~~ii)iii)~~ who do not read at or above a 9.0 grade level.
- B) Educational activities may be combined with other activities if it is determined appropriate.
- 2) Approval Criteria for Education Directly Related to Employment
- A) The program selected by the individual must be accredited under State law.
- B) The individual's program must be needed for the participant to complete his or her Responsibility and Services Plan.
- C) The individual must be enrolled full-time as defined by the institution or part-time if a full-time program is not available or appropriate.
- D) When programs of comparable quality are available in more than one geographical area, the program selected will be the least costly in supportive service costs to the Department. When programs of

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comparable quality are available in the same geographical area, the individual may select a preferred program.

- 3) Participation Requirements
 - A) Participation must be full-time unless a full-time program is not readily available or a part-time program is most appropriate based on the individual's or family's circumstances.
 - B) Clients attending a program administered by the Illinois State Board of Education (ISBE) must maintain satisfactory progress as determined by the following:
 - i) active participation and pursuit of educational objectives;
 - ii) teacher's written remarks;
 - iii) grades;
 - iv) demonstrated competencies;
 - v) classroom exercises; and
 - vi) periodic test/retest results.
 - C) ISBE educational providers determine satisfactory progress based on a combination of the indicators listed above and test/retest results. The determination of satisfactory progress including test/retest results must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.
 - D) Clients attending a program not administered by ISBE must maintain satisfactory progress as determined by the written policy of the institution. The determination of satisfactory progress including test/retest results must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months.

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- E) Curriculum changes must be made with the prior approval of TANF staff and will be approved when the change is consistent with the Responsibility and Services Plan.
 - F) Participation in Education Directly Related to Employment is a secondary activity that can be counted for a maximum of 10 hours per week when the client is also engaged in work or a countable work or training activity for 20 hours per week.
- b) Vocational Training
- Vocational Training is designed to increase the individual's ability to obtain and maintain employment. Vocational Training activities will include vocational skill classes designed to increase a participant's ability to obtain and maintain employment. Vocational Training may include certificate programs. Participants who are not working are limited to short-term Vocational Training programs lasting less than 12 months and may be required, in coordination with the education/training schedule, to participate in Job Readiness activities, job skills training, Job Search, and/or Work Experience at the same time they are attending the education/training program to the extent resources will allow.
- 1) Approval Criteria For Vocational Training
 - A) The individual's program must be accredited under requirements of State law.
 - B) The individual must be underemployed or unemployed and in need of additional training and the training will better prepare the participant to enter the labor force.
 - C) Co-enrollment in Education Directly Related to Employment and Vocational Training is encouraged if the individual does not have a high school diploma or GED.
 - D) The individual must apply for all available educational benefits such as the Pell Grant and scholarships from the Illinois Student Assistance Commission as well as any scholarship or grants identified by the education or training facility for which the participant may be eligible.

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- E) The individual must be enrolled full-time as defined by the institution or part-time if full-time is not available or appropriate.
 - F) Clients who are working at least 20 hours per week (10 hours per week if their youngest child is under age six) and whose combined work plus credit hours or class hours, as appropriate, equal at least 30 hours (20 hours if their youngest child is under age six) each week may be approved for vocational training after the 12-month limitation.
 - G) The individual must be in a program needed for the individual to obtain employment in a recognized occupation.
 - H) Jobs must be available in the chosen field in a specific geographical area where the individual intends to work consistent with the individual's Responsibility and Services Plan upon completion.
 - I) When programs of comparable quality are available in more than one geographical area, the program selected will be the least costly in supportive service costs to the Department. When programs of comparable quality are available in the same geographical area, the individual may select a preferred program.
 - J) Vocational Training may be combined with other activities if it is determined appropriate.
 - K) The individual must possess the aptitude, ability and interest necessary for success in the selected program as determined by such factors as test results and educational/training background.
- 2) Participation Requirements
- A) Participation must be full-time unless a full-time program is not readily available or a part-time program is most appropriate based on the individual's or family's circumstances.
 - B) The individual must maintain a "C" average if this measurement is used by the institution to determine satisfactory progress. The

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individual will be allowed one semester below a "C" average to bring the grades up to a "C" average. When grades are not used, progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term.

- C) The individual must participate the assigned number of hours each week.
 - D) The client must complete all scheduled program enrollment hours each academic term to maintain satisfactory progress, except in the following situation. If the client withdraws from one or more scheduled courses during an academic term, the client must complete all scheduled enrollment hours during the following academic term. The client may withdraw from one or more scheduled classes in more than one academic term, but must complete all scheduled enrollment hours the following academic term to maintain satisfactory progress.
 - E) Curriculum changes must be made with the prior approval of TANF and will be approved when the change is consistent with the Responsibility and Services Plan.
- c) Education at Secondary School
- 1) A minor parent age 19 or under who has not completed secondary school or received his or her GED is placed in this program. Regular attendance at a secondary school or in a course of study leading to a GED is required. The client must make satisfactory progress as defined by a passing grade. Grades must be reported upon completion of the academic term or twice a year if the program is continuous for 12 months. If it is determined that secondary school is inappropriate or not the best option for an 18 or 19 year old parent, the 18 or 19 year old parent may be assigned to work activities or training.
 - 2) Adult Client
The Department shall approve participation in high school or a high school equivalency program upon written or oral request of the adult client if he or she has not already earned a high school diploma or a high school

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equivalency certificate. However, participation may be delayed as part of an applicant's or recipient's personal plan for achieving employment and self-sufficiency if it is determined that the benefit from participating in another activity would be greater to the client than participation in high school or a high school equivalency program. The availability of high school or high school equivalency programs may also delay enrollment in these programs. The Department shall treat these activities as a core activity as long as satisfactory progress is made, as determined by the high school or high school equivalency program. (See subsections (a)(3)(B) through (E) for criteria to determine satisfactory progress.) Proof of satisfactory progress shall be provided by the client or the school at the end of each academic term. The Department shall treat participation in high school or a high school equivalency program as a core activity and shall count participation in high school or a high school equivalency program toward the first 20 hours per week of participation.

- d) Job Skills Training Directly Related to Employment
- 1) Description of Job Skills Training
Job skills training directly related to employment is training and education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. This can include literacy instruction or language instruction when ~~thesueh~~ instruction is explicitly focused on skills needed for employment.
 - 2) Assignment to Job Skills Training
A client may be assigned to Job Skills Training when:
 - A) The client is working or in another countable work or training core activity at least 20 hours per week.
 - B) The client needs additional training to qualify for or to retain employment in a recognized occupation that will make the family self-supporting.
 - C) The client has a GED or high school diploma, if it is required for training or employment in the chosen field.

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- D) The client has the ability and interest needed for success in the training. This is determined by test results, educational/training background, and talking to the client.
 - E) Jobs are available in the chosen field in which the client intends to work.
- e) Job Readiness
- 1) The Job Readiness activities are designed to enhance the quality of the individual's level of participation in the world of work while learning the necessary essentials to obtain and maintain employment. These activities help individuals gain the necessary job finding skills to help them find and retain employment that will lead to economic independence.
 - 2) Assignment to Job Readiness
Job Readiness activities may be combined with other activities if it is determined appropriate.
 - 3) Participation requirements
 - A) Participation must be full-time unless a full-time program is not readily available or a part-time program is most appropriate based on the individual's or family's circumstances.
 - B) The individual must attend all scheduled classes or sessions. The individual must be making satisfactory progress as defined by the written policy of the job readiness provider and approved by the Department.
 - C) The individual must participate the number of assigned hours each week.
 - D) The individual must respond to a job referral, accept employment and respond to mail-in contact.
- f) Job Search
- 1) Description of Job Search

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Job Search may be conducted individually or in groups. Job Search may include the provision of counseling, job seeking skills, training and information dissemination. Group Job Search may include training in a group session.

- 2) Assignment to Job Search
 - A) If assessed as job ready, participants will be assigned to Job Search. If job ready clients are unable to find employment on their own, they will be reassessed and may be placed in a more appropriate activity within six months.
 - B) Individuals completing education or vocational training or Job Readiness training may be assigned to Job Search.
 - C) Job Search may be combined with other activities if it is determined appropriate.
- 3) Participation Requirements
 - A) Participants must attend all scheduled classes or sessions. Participants will be notified in writing of all meetings.
 - B) Individuals must contact employers in an effort to secure employment.
 - C) Acceptable employer contacts may include but are not limited to:
 - i) a face-to-face contact with an employer or the employer's representative;
 - ii) the completion and return of an application to an employer, including an online application;
 - iii) the completion of a civil service test required for employment with State, local, or the federal government or the completion of a Department of Employment Security (DES) screening test;

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- iv) the completion and mailing of a resume with a cover letter to a recognized employer;
 - v) reporting to the union hall for union members verified to be in good standing; or
 - vi) registration with DES/Illinois Employment and Training Center (IETC).
- g) Community Work Experience
TANF participants who have not found employment and who need orientation to work, work experience or training are placed on a supervised work assignment to improve their employment skills through actual Work Experience at private or not-for-profit employers, organizations and governmental agencies. Participants are referred to work assignments as vacancies are available. Participants in Work Experience may perform work in the public interest (which otherwise meets the requirements of this Section) such as enrollment as a full-time AmeriCorps VISTA volunteer or Job Corps participant under Title I of the 1973 Domestic Volunteer Services Act (42 USC 4951 et seq.) for a Federal office or agency with its consent, and, notwithstanding 31 USC 1342 or any other provision of law, such agency may accept such services but such participants shall not be considered to be federal employees for any purpose.
- 1) Assignment to Community Work Experience
 - A) Community Work Experience is for:
 - i) participants who will benefit from working for an employer who provides a subsidized employment assignment to improve the individual's opportunity to attain self-sufficiency; or
 - ii) participants who need experience to prevent deterioration of, or to enhance, existing skills (for example, typing).
 - B) Entry into Community Work Experience
Participants are determined to be appropriate for Community Work Experience activity based on an assessment of their education, training and employment history. Procedures used in the

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assessment are a face-to-face meeting with the participant and a review of all available information on the participant (including, but not limited to, the individual's case record and Responsibility and Services Plan).

- C) **Community Work Experience Positions**
Participants shall be assigned to a Community Work Experience position to increase the potential for attaining employment. The date participants are scheduled to begin the work assignment marks the beginning of participation in Community Work Experience. Community Work Experience activities may be combined with other activities if it is determined appropriate.
- D) **Enrollment as a full-time Americorps VISTA volunteer or Job Corps participant under Title I of the 1973 Domestic Volunteer Services Act (42 USC 4951 et seq.) is an allowable work activity.** Paid work study and some paid Workforce Investment Act (WIA) programs are also allowable.

2) **Participation Requirements**

- A) **The hours of the work assignment for a calendar month shall not exceed the family's monthly TANF grant and food stamp allotment divided by the higher of the State or federal minimum wage. When this calculation results in less than 20 hours, the 20 hour TANF work requirement will be deemed met when the individual is working the maximum number of hours permitted under this calculation.**
- B) **During work assignment, participants shall be required to perform Job Search activities unless a participant is in an education and training program. Participants are required to accept bona fide offers of employment pursuant to Section 112.72.**
- C) **Participants are also required to report as scheduled and on time to their Work Assignment Sponsor when notified of an assignment. When they cannot report to their work assignment or if they will be late, they are to immediately notify their Work Assignment Sponsor.**

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- D) Participants must participate the number of assigned hours each week.
- 3) **Review**
Every six months, the participant's Responsibility and Services Plan will be reviewed. If continuing the work assignment will benefit participants in terms of furthering work skills (see subsections (g)(1)(A) and (B)), participants shall be reassigned to the same or another work assignment. In addition, participants will be assessed for assignment to another TANF activity.
- 4) **Length of Assignment**
Participants must participate in Work Experience for as long as the Responsibility and Services Plan reflects the need for this activity.
- 5) **Anti-Displacement**
Community Work Experience is subject to the provisions of Section 112.78(q).
- h) **On the Job Training (OJT)**
In OJT, a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to full and adequate performance of the job.
 - 1) **Assignment to OJT**
 - A) Job ready individuals may be assigned to OJT.
 - B) OJT participants shall be compensated at the same rate and with the same benefits as other employees.
 - C) Wages to participants in OJT shall not be less than the higher of the State or federal minimum wage.
 - D) Wages to participants in OJT are considered earned income.
 - E) OJT may be combined with other component activities if it is determined appropriate.

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- 2) Participation Requirements
The individual must participate the assigned number of hours each week.
 - 3) Supportive Services
Participants in OJT receive child care and Medicaid benefits.
- i) Work Supplementation Program
- 1) The Work Supplementation Program develops employment opportunities for TANF recipients by paying wage subsidies to employers who hire program participants. The program is funded by diverting the cash grant an individual would receive if not employed and using the diverted grant to pay a wage subsidy to the employer who hires the recipient. The goal of the Work Supplementation Program is to obtain jobs for TANF recipients, who might not be hired without a subsidy, with sufficient pay to take them off TANF.
 - 2) Eligible Participants
 - A) TANF participants who meet the selection criteria listed in subsection (i)(2)(B) ~~of this Section~~ are eligible to participate in the Work Supplementation Program. Participation in the program is voluntary. A TANF recipient who wants to participate in the Work Supplementation Program must agree to all provisions in this Section during the time of participation in the program.
 - B) In order to place special emphasis on people who would not be likely to obtain a job without work supplementation, TANF recipients must meet the following criteria for selection to participate in the Work Supplementation Program:
 - i) the recipient must be the parent of at least one of the children in the TANF unit;
 - ii) the recipient must have completed the Job Search work activity; and
 - iii) the recipient must have no income other than TANF

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benefits.

- C) Recipients identified for employment must be determined eligible for participation by their worker. The worker will recommend for participation in the Work Supplementation Program those participants who are likely to encounter difficulty in obtaining employment (for example, lack of skills for which jobs are available in the area, lack of work history).
 - D) Nothing in this Section should be construed as providing any recipient the right to participate in the program.
- 3) Benefits and Reporting Requirements While Participating in the Work Supplementation Program
- A) Participants in the Work Supplementation Program are considered to be TANF recipients and remain eligible for Medical Assistance for the duration of their Work Supplementation Program participation. Child care, for cases that are eligible for a cash grant, will be regarded as employment child care.
 - B) The participant must agree to accept wages from employment, which will be at least an amount which would be earned by working full time (30 hours minimum) at the prevailing minimum wage, less applicable payroll taxes.
 - C) Participants are required to file reports every six months as a requirement for continuing eligibility.
 - D) Wages paid under a Work Supplementation Program shall be considered to be earned income for purposes of any provision of law (42 USC 1614(e)(3)).
- 4) Duration of Program Participation
- A) Participants may not exceed a total of six months in the Work Supplementation Program subsidized placements regardless of the number of times an individual becomes a TANF recipient. The period of a single assignment is dependent upon the terms of the

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Work Supplementation Program contract that has been developed with the employer. Recipients will be informed of the length of the Work Supplementation Program subsidy period prior to placement.

- B) Participants who leave a supported work position without good cause (as defined in Section 112.80) are removed from the Work Supplementation Program and are subject to sanction.
- 5) Contracts with Employers
- A) Employers that participate in the Work Supplementation Program must enter into a written contract with the Department prior to receiving referrals.
 - B) Employers must be in good standing (that is, in compliance with all applicable federal, State, county and local laws, regulations and ordinances) with the Illinois Department of Revenue, the Secretary of State and any and all regulatory agencies that have jurisdiction over their activities.
 - C) Employers agree to screen clients to hire on their own payroll after six months. Failure to do so will result in the employer being terminated from the program.
- 6) Calculation of the Diverted Grants
- A) The level of grant to be diverted is determined on a prospective basis when a work assignment under the Work Supplementation Program is made. The effective date of the diverted grant is the first day of the first full month of Work Supplementation Program wages.
 - B) Work Supplementation Program participants are eligible only for the earned income budgeting disregards provided in Sections 112.141 and 112.143. The difference between the flat grant amount and revised amount is diverted to the wage pool.
 - C) The difference between the payment level and the grant the

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participant receives is diverted and used in whole or in part to pay a wage subsidy to the employer.

7) Program Completion

If the participant is no longer eligible for TANF benefits after the Work Supplementation Program period, a determination of continued medical eligibility shall be made in accordance with Section 112.330.

8) Anti-Displacement

The Work Supplementation Program is subject to the provisions of Section 112.78(q).

j) Bachelor Degree Program

A Bachelor Degree Program must be administered by an educational institution accredited under requirements of State law including, but not limited to, the Barber, Cosmetology, [Esthetics, Hair Braiding](#), and Nail Technology Act of 1985 [225 ILCS 410], the Real Estate License Act of 2000 [225 ILCS 454], the Public Community College Act [110 ILCS 805], the University of Illinois Act [110 ILCS 305], the Chicago State Universities Law [110 ILCS 660], the Eastern Illinois University Law [110 ILCS 665], the Governors State University Law [110 ILCS 670], the Illinois State University Law [110 ILCS 675], the Northeastern Illinois University Law [110 ILCS 680], the Northern Illinois University Law [110 ILCS 685], the Western Illinois University Law [110 ILCS 690] and the Southern Illinois University Name Change Act [110 ILCS 505].

1) Approval Criteria For a Bachelor Degree Program

A) The individual must have a high school diploma or a GED.

B) Approval of a Bachelor Degree program is part of the process of developing the Responsibility and Services Plan (RSP) with the client. Factors to consider when determining whether a Bachelor Degree program is appropriate include, but are not limited to, the client's educational and work history, the client's aptitude for further education, the client's career goal, the client's ability to finance tuition and other expenses not provided by the Department, and the client's ability to arrange transportation, child care and other family obligations.

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- C) The individual must be enrolled full-time as defined by the institution or part-time if a full-time program is not available or appropriate to upgrade skills for current employment.
- D) The individual must be in a program needed for the individual to obtain employment in a recognized occupation or upgrade skills for current employment.
- E) The individual does not already possess a baccalaureate degree or an associate degree if the Responsibility and Services Plan goal is an associate degree.
- F) If the participant possesses a baccalaureate degree, no additional education may be approved.
- G) The individual's program must be accredited under requirements of State law.
- H) If needed, the individual must apply for all available educational benefits, such as the Pell Grant and scholarships from the Illinois Student Assistance Commission, as well as any scholarship or grants identified by the education or training facility for which the participant may be eligible.
- I) Jobs, consistent with the individual's Responsibility and Services Plan, must be available in the chosen field in a specific geographical area where the individual intends to work upon program completion.
- J) When programs of comparable quality are available in more than one geographical area, the program selected will be the least costly in supportive service costs to the Department. When programs of comparable quality are available in the same geographical area, the individual may select a preferred program.
- K) The program selected may be no more than a program that will result in the receipt of a baccalaureate degree consistent with the Responsibility and Services Plan.

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- L) For category 04 cases, the individual, unless exempted under subsection (i)(1)(N) of this Section, must also be employed in unsubsidized work for at least 20 hours each week or be participating for at least 20 hours per week in one or more of the paid or unpaid work activities listed in this subsection (j)(1)(L). In addition, the combined work or work activities plus credit hours or class hours, as appropriate, must equal at least 30 hours per week.
- i) Work study;
 - ii) Practicums, clinicals, or vocational internships such as student teaching, if required by the institution to complete the educational program;
 - iii) Apprenticeships;
 - iv) Self-employment; or
 - v) Enrollment as a full-time Americorps VISTA volunteer or Job Corps participant under Title I of the 1973 Domestic Volunteer Services Act (41 USC 4951 et seq.).
- M) For category 06 (two parent) cases, the parents in the case must be working or involved in approved work activities for a total of 35 hours per week, individually or combined.
- N) Clients in a category 04 case with an approved RSP for full-time Bachelor Degree program and a cumulative 2.5 or better grade point average (on a 4.0 scale) may not be subject to the minimum work requirement, described in subsection (i)(1)(L) ~~of this Section~~, as follows:
- i) For the first semester, while the client is establishing a grade point average, the client will not be subject to the minimum work requirement. If a 2.5 grade point average is not achieved in the first semester, the client will be subject to the minimum work requirement in the second semester.
 - ii) As long as the client's cumulative GPA remains at least 2.5,

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the client will not be subject to the minimum work requirement.

- iii) If the client's cumulative GPA falls below 2.5 at any time, the client may continue to go to school full-time for another semester without being subject to the minimum work requirement.
- iv) If the cumulative GPA is below 2.5 two semesters in a row, the client will be subject to the minimum work requirement.

- O) Individuals who lose employment, unless due to a temporary scheduled employer shutdown, can continue in a Bachelor Degree program and receive supportive services, if eligible, during the current semester while they seek employment. If the individual has not reentered employment by the end of the current semester, the individual will not continue in post-secondary education and receive supportive services, but will be reassigned to another appropriate activity.

2) Participation Requirements

- A) The individual must maintain a "C" average if this measurement is used by the institution to determine satisfactory progress. The individual would be allowed one semester below a "C" average to bring the grades up to a "C" average. When grades are not used, satisfactory progress will be determined by the written policy of the institution to establish a comparable grade level upon completion of the academic term.
- B) The client must complete all scheduled program enrollment hours each academic term to maintain satisfactory progress, except in the following situation. If the client withdraws from one or more scheduled courses during an academic term, the client must complete all scheduled enrollment hours during the following academic term. The client may withdraw from one or more scheduled classes in more than one academic term but must complete all scheduled enrollment hours the following academic

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term to maintain satisfactory progress.

- C) Curriculum changes must be made with the approval of the TANF worker and will be approved when the change is consistent with the Responsibility and Services Plan.
- k) Job Development and Placement (JDP)
 - 1) TANF staff shall develop through contacts with public and private employers unsubsidized job openings for participants. Job interviews will be secured for clients by the marketing of participants for specific job openings.
 - 2) Assignment to JDP
Job ready individuals may be assigned to JDP.
- l) Job Retention
Job Retention is designed to assist participants in retaining employment. Job Retention expenses are provided. The individual's supportive service needs are assessed and the individual receives counseling regarding Job Retention skills. Counseling or job coaching may continue after employment begins as long as the individual continues to receive TANF.
- m) Community Service
Community Service is a structured program of activities in which the client performs work for the direct benefit of the community. Community Service programs serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and childcare. Community service can occur at locations such as libraries, area schools, soup kitchens, food pantries, senior citizen centers, nursing homes, hospitals, social service agencies and homeless shelters.
 - 1) Community Service Positions
Clients shall be assigned to a Community Service position to increase the potential for attaining employment. Each Community Service position will have a position description that describes the duties and the expectations of clients assigned to Community Service. The date a client is scheduled to begin the Community Service assignment marks the

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beginning of participation in Community Service. Community Service activities may be combined with other activities if it is determined appropriate.

2) Participation Requirements

- A) The hours of the Community Service assignment for a calendar month shall not exceed the family's monthly TANF grant and food stamp allotment divided by the higher of the State or federal minimum wage. When this calculation provides less than 20 hours, the 20 hours will be deemed met when the individual is participating in the maximum number of hours permitted under the minimum wage provision.
- B) During Community Service assignment, participants shall be required to perform Job Search activities unless a participant is in an education and training program or is not job ready. Participants are required to accept bona fide offers of employment pursuant to Section 112.72.
- C) Participants are also required to report as scheduled and on time to their Community Service sponsor when notified of an assignment. When they cannot report to their work assignment or if they will be late, they are to immediately notify their Work Assignment Sponsor.
- D) Participants must participate in the number of assigned hours each week.

3) Review

At the reassessment the participant is assigned to the more structured Work Experience activity or Work First when the participant becomes more job ready.

n) Work First/Pay After Performance

- 1) Work First is a Work Experience pay-after-performance program.
- 2) Participation Requirements

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- A) The hours of the work assignment for a calendar month shall not exceed the family's monthly TANF grant and food stamp allotment divided by the higher of the State or federal minimum wage. When this calculation provides less than 20 hours, the 20 hours will be deemed met when the individual is working the maximum number of hours permitted under the minimum wage provision.
 - B) Participants shall be required to perform Job Search activities. Participants are required to accept bona fide offers of employment pursuant to Section 112.72.
 - C) Participants are also required to report as scheduled and on time to their Work Assignment Sponsor when notified of an assignment. When they cannot report to their work assignment or if they will be late, they are to immediately notify their Work Assignment Sponsor.
 - D) Participants must participate in the number of assigned hours each week.
- 3) Participants will be assigned to Work First/Pay After Performance until they find unsubsidized employment. An assessment will be conducted every six months to determine appropriateness of assignment, if work skills are being gained and if the opportunity for placement exists.
 - 4) The Department will develop Work First/Pay After Performance positions with private employers or not-for-profit or public agencies. The Department shall provide workers' compensation coverage for participants. The Department will ensure all applicable employer safety laws are met for Work First/Pay After Performance assignments. Failure of an employer to do so will result in termination of the contract.
 - 5) Work First/Pay After Performance is subject to the provisions of subsection (q) ~~of this Section~~.
 - 6) Individuals who fail to participate, without good cause, are determined to have not availed themselves of the Work First opportunity. If good cause is not determined, the entire case is ineligible for TANF assistance. Upon

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reapplication for TANF, the individual may be reassigned to a Work First position.

- 7) Failure to participate is determined to have occurred:
 - A) if the participant does not report to the provider or employer. Participants are deemed to have failed to report if they have not contacted the provider or employer in person, by telephone or mail, or by a third party; or
 - B) if the participant has engaged in misconduct connected with the Work First assignment. The term "misconduct" means deliberate and willful violation of a reasonable rule or policy of the employer governing the individual's behavior in performance of work, provided such violation has harmed the employer or other employees or has been repeated by the individual despite a warning or the explicit instruction from the employer.
- o) Substance Abuse
 - 1) Selection of Participants
If alcohol or substance abuse is suspected as a barrier to employment during the family assessment process or at an intake interview, the client will be referred for a clinical assessment by an alcohol/substance abuse counselor. If treatment is indicated, the client will be required to follow-up as a condition of eligibility, unless the client is employed more than 30 hours per week or if treatment resources are not available.
 - 2) Barrier Reduction Activity
Clients participating in alcohol/substance abuse treatment in accordance with their Responsibility and Services Plan are participating in a barrier reduction activity.
 - 3) Supportive Services
Supportive services, i.e., child care and transportation, will be provided to enable clients' participation in treatment, to the extent resources are available.
 - 4) Sanctions

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- A) Reconciliation will be attempted with clients who fail to cooperate with their treatment plan. Cooperation with the treatment plan will be defined by the alcohol/substance abuse provider, based on uniform guidelines.
 - B) When reconciliation is unsuccessful, the TANF sanctions will apply.
- p) Domestic or Sexual Violence
- 1) Selection of Participants
All clients receiving TANF will have a family assessment completed. If domestic or sexual violence is a barrier to employment, the client will be referred to a domestic or sexual violence service provider.
 - 2) Barrier Reduction Activity
Clients participating in domestic violence abuse treatment in accordance with their Responsibility and Services Plan are participating in a barrier reduction activity.
 - 3) Supportive Services
Supportive Services, i.e., child care and transportation, will be provided to enable clients' participation in treatment, to the extent resources are available.
 - 4) Sanctions
If the individual does not comply with the Responsibility and Services Plan relating to domestic or sexual violence, a sanction will not be imposed. The Responsibility and Services Plan will be reviewed, and other work related activities will be developed. Compliance will be required for the new activities.
- q) Anti-Displacement and Grievance Procedure
- 1) An employer may not utilize a work activity participant if such utilization would result in:
 - A) the displacement or partial displacement of current employees,

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- including but not limited to a reduction in hours of non-overtime or overtime work, wages, or employment benefits; or
- B) the filling of a position that would otherwise be a promotional opportunity for current employees; or
 - C) the filling of a position created by or causing termination, layoff, a hiring freeze, or a reduction in the workforce; or
 - D) the placement of a participant in any established unfilled vacancy; or
 - E) the performance of work by a participant if there is a strike, lockout, or other labor dispute in which the employer is engaged.
- 2) An employer who wishes to utilize work activity participants shall notify the appropriate labor organization in accordance with Section 9A-13 of the Public Aid Code.
- 3) Participants, other employees at the work site or their representative, may file a grievance with the Department if they believe the participant's work assignments are causing displacement. In order for the Department to consider a grievance, it must be in writing and contain the following information:
- A) the name and address of the participant or other employee at the work site (the grievant);
 - B) the participant's case number (if grievant is participant);
 - C) the grievant's Social Security number;
 - D) Work Experience (work site); and
 - E) a statement as to why the grievant believes the participant is causing displacement.
- 4) Within ten days after receipt of a written grievance, the Department shall arrange an in-person conference with:

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- A) the grievant;
 - B) the grievant's representative, if any;
 - C) the Work Experience Sponsor;
 - D) the Work Experience Sponsor's representative, if any; and
 - E) the Department's representative.
- 5) At the in-person conference, the Department shall solicit and receive from the grievant and the Work Experience Sponsor any documents and statements relevant to the matters alleged in the grievance. The Work Experience Sponsor shall provide whatever documents or other information is requested by the grievant and/or the Department.
- 6) Within 15 days after the in-person conference, the Department shall advise the participant or other employee at the work site and the Work Experience Sponsor in writing of the information obtained in the investigation and of the findings and conclusions as to the matters alleged in the grievance.
- 7) If the Department concludes that displacement occurred (as described in subsection (q)(1)-~~of this Section~~), the Department shall terminate the participant's assignment to that Work Experience Sponsor. If the Department concludes, as a result of the evidence presented at the conference, that the Work Experience Sponsor has caused displacement by use of TANF participants in addition to the participants involved in the grievance, the Department shall terminate those TANF participants' assignment to that Work Experience Sponsor.
- 8) The Department, its employees or the Work Experience Sponsor shall not retaliate for filing a grievance or otherwise proceeding under this policy. Retaliation will result in the termination of the Work Experience Sponsor contract.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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SUBPART G: FINANCIAL FACTORS OF ELIGIBILITY

Section 112.110 Exempt Unearned Income

The following unearned income shall be exempt from consideration in determining eligibility and the level of assistance payment:

- a) The value of the benefit allotment under the Food and Nutrition Act of 2008 (7 USC 2017(b));
- b) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- c) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4636);
- d) Any funds distributed per capita to or held in trust for members of any Indian Tribe under P.L. 92-254, P.L. 93-134, P.L. 94-114 or P.L. 94-540;
- e) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended (42 USC 3045 et seq.);
- f) Any compensation provided to individual volunteers under the Volunteers in Service to America (VISTA) Program (known as AmeriCorps VISTA). Payments made under Americorps State/National programs, funded under the National and Community Service Act of 1993, are not exempt. Stipends or living allowance payments made under this program are considered nonexempt earned income. These payments are subject to the general rules concerning the budgeting of earned income;
- g) Income received under the provisions of Section 4(c) of the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act [320 ILCS 25/4]. This includes both the benefits commonly known as the circuit breaker and additional grants;
- h) Payments for supporting services or reimbursement for out-of-pocket expenses made to volunteers serving as senior health aides, senior companions, foster grandparents, and persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under

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Titles II and III, pursuant to Section 418 of P.L. 93-113;

- i) Unearned income such as need based payments, cash assistance, compensation in lieu of wages and allowances received through the Workforce Investment Act (WIA);
- j) Social Security death benefit expended on a funeral and/or burial;
- k) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended (42 USC 1780(b)) and the special food service program for children under the Richard B. Russell National School Lunch Act, as amended (42 USC 1760);
- l) Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act (43 USC 1626);
- m) Payments received under Title I of P.L. 100-383 of the Civil Liberties Act of 1988 (50 USC 1989b through 1989b-8);
- n) Payments received under Title II of P.L. 100-383 of the Aleutian and Pribilof Islands Restitution Act (50 USC 1989c through 1989c-8);
- o) Payments made to veterans who receive an annual disability payment or to the survivors of deceased veterans who receive a one-time lump-sum payment from the Agent Orange Settlement Fund or any other fund referencing Agent Orange product liability under P.L. 101-201;
- p) Payments received under the federal Radiation Exposure Compensation Act (42 USC 2210 nt);
- q) Federal subsidized housing payments under section 8 of the Housing and Community Development Act (42 USC 1437f);
- r) Any adoption subsidy payment or foster care payment received from DCFS or from a state welfare agency of another state are exempt for MAG and MANG. Independent Living Arrangement Payments are not exempt for MAG and MANG;
- s) Supportive Service payments (Section 112.82);

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- t) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to Section 2605(f) of P.L. 97-35;
- u) Disaster relief payments provided by federal, state or local government or a disaster assistance organization;
- v) Any payment provided by the Department of Human Services under the Family Assistance Program for ~~Mentally Disabled Children~~ with Mental Disabilities [405 ILCS 80/Art. III] under P.A. 86-921;
- w) GA Emergency Financial Assistance issued through vendor payment. These payments can only be issued once in a 12-month period to persons who do not currently receive TANF cash assistance;
- x) A nonrecurring lump-sum SSI or SSA payment made to an individual in a TANF assistance unit. The nonrecurring SSA lump sum is exempt if it is based on disability. The monthly amount, up to the monthly SSI level for one, is exempt. For those individuals not in a TANF assistance unit whose income is used to determine TANF eligibility for others (for example, the parent of a person under age 18 who is receiving assistance as a parent), the lump-sum payment is nonexempt income for the month received;
- y) Payments made to individuals because of their status as victims of Nazi persecution pursuant to P.L. 103-286;
- z) Payments to a member of the Passamquoddy Indian Tribe, the Penobscot Nation of the Houlton Band of the Maliseet Indians pursuant to the Maine Indian Claims Settlement Act of 1980;
- aa) Up to \$2000 per year of income received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands pursuant to Section 13736 of P.L. 103-66;
- bb) Payments based on disability status are disregarded in an amount up to the Supplemental Security Income (SSI) payment level for one person with no income. This disregard applies to disability benefits from Social Security (including SSI), Railroad Retirement Disability, Department of Veterans' Affairs (100% disability only) and Black Lung;

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- cc) Payments made under the federal Crime Act of 1984 (as amended by P.L. 104-132, Section 234, Crime Victims Fund);
- dd) Inconsequential income, which is defined as gifts, prizes or other unearned income (excluding that which is otherwise exempted in this Section) of up to \$50 per person per quarter;
- ee) The value of home produce that is used for personal consumption;
- ff) Child support payments made to an assistance unit by the Department or non-custodial parent that represent the first ~~\$100~~\$50 or any lesser amount of support collected in a month for a family with one child, or \$200 or any lesser amount of support collected in a month for a family with two or more children;
- gg) Two dollars of every \$3 of excess child support distributed by the child support agency to a family with earnings budgeted. This includes the wage supplementation programs of on-the-job training, Job Corps, AmeriCorps VISTA, and work study;
- hh) Payments from the principal or trust of a trust fund made to or on behalf of a dependent child when the court orders the money released for a specific purpose other than the income maintenance needs of the child;
- ii) Earmarked child support payments received by the client for the support of a child not included in the assistance unit;
- jj) Cash that is exchanged for purposes of satisfying payment of shelter-related obligations in situations in which the assistance unit shares a dwelling unit with another family, individual or individuals. The money is not available to meet the needs of the party who received and disburses the shelter-related payment;
- kk) Employment-related reimbursements for past or future expenses to the extent that they do not exceed actual expenses incurred and do not represent a gain or benefit to the client;
- ll) All educational loans, grants, scholarships, fellowships, veteran's educational benefits, and federal and State work study programs;

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- mm) The \$25 per week increase in Unemployment Compensation Benefits authorized under the American Recovery and Reinvestment Act of 2009 (Div. B, Title II, Sec. 2002 of P.L. 111-5);
- nn) The Economic Recovery Payment to recipients of Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits, and Veterans Disability Compensation or Pension Benefits authorized under the American Recovery and Reinvestment Act of 2009 (Div. B, Title II, Sec. 2201 of P.L. 111-5);
- oo) Payments to eligible persons who served in the United States Armed Forces in the Far East during World War II authorized under the American Recovery and Reinvestment Act of 2009 (Div. A, Title X, Sec. 1002 of P.L. 111-5).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

CHIEF PROCUREMENT OFFICER FOR
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Chief Procurement Officer for Capital Development Board
- 2) Code Citation: 44 Ill. Adm. Code 8
- 3) Section Number: 8.2020 Adopted Action:
Amendment
- 4) Statutory Authority: The Illinois Procurement Code [30 ILCS 500]
- 5) Effective Date of Rule: October 10, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rule is available for review with the Chief Procurement Officer for Capital Development Board at 401 S. Spring, Room 318 Stratton Office Building, Springfield IL 62706.
- 9) Notice of Proposal published in the *Illinois Register*: 40 Ill. Reg. 6294; April 15, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? Yes
 - A) Statement of Objection: 40 Ill. Reg. 10342; July 29, 2016
 - B) Agency Response: Modify text to resolve objection.
 - C) Date Agency Response submitted for Approval to JCAR: October 3, 2016
- 11) Differences between Proposal and Final Version: The Chief Procurement Office modified the rule to require policies to manage the use of the small purchase method of source selection, including requiring documentation of how each small purchase was made. The policies include: identifying the scope of work, providing the same notice and time for response from contacted businesses, consideration of small and diverse businesses, obtaining quotes from at least 3 businesses that can provide the work, and not selecting the same business more than once in a calendar year.

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- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The proposed amendment implements the changes to the small purchase threshold as recommended by the Procurement Policy Board at their December 2, 2015 meeting. The amendment raises the small purchase threshold for construction from \$44,100 (as adjusted by CPI increases) to \$100,000.
- 16) Information and questions regarding this adopted rule shall be directed to:

Margaret van Dijk
401 S. Spring Street
318 Stratton Office Building
Springfield IL 62706

217/558-2156

The full text of the Adopted Amendment begins on the next page:

CHIEF PROCUREMENT OFFICER FOR
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NOTICE OF ADOPTED AMENDMENT

TITLE 44: GOVERNMENT CONTRACTS, GRANTMAKING,
PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS
CHAPTER IV: CHIEF PROCUREMENT OFFICER FOR
CAPITAL DEVELOPMENT BOARD

PART 8

CHIEF PROCUREMENT OFFICER FOR THE CAPITAL DEVELOPMENT BOARD

SUBPART A: GENERAL

Section	
8.1	Short Title
8.5	Policy and Scope
8.15	Definition of Terms Used in This Part
8.20	Referenced Materials
8.25	Property Rights

SUBPART B: PROCUREMENT RULES, POLICIES AND PROCEDURES

Section	
8.530	Policies and Procedures

SUBPART C: PROCUREMENT AUTHORITY

Section	
8.1005	Procurement Authority
8.1040	Central Procurement Authority of the CPO
8.1050	Designees

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section	
8.1501	Illinois Procurement Bulletin
8.1525	Bulletin Content
8.1535	Vendor Portal
8.1560	Alternate and Supplemental Notice
8.1570	Error in Notice

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NOTICE OF ADOPTED AMENDMENT

- 8.1580 Direct Solicitation
- 8.1585 Notice Time
- 8.1595 Availability of Solicitation Time

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section

- 8.2005 General Provisions
- 8.2010 Competitive Sealed Bidding
- 8.2020 Small Purchase Limits
- 8.2025 Sole Economically Feasible Source Procurement
- 8.2030 Emergency Procurements
- 8.2036 Other Methods of Source Selection
- 8.2037 Tie Bids and Proposals
- 8.2038 Modification or Withdrawal of Bids or Proposals
- 8.2039 Mistakes
- 8.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

SUBPART F: PREQUALIFICATION AND RESPONSIBILITY

Section

- 8.2045 Vendor Prequalification and Responsibility
- 8.2046 Responsibility and Ineligibility

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section

- 8.2047 Security Requirements

SUBPART H: SPECIFICATIONS AND SAMPLES

Section

- 8.2050 Specifications and Samples

SUBPART I: CONTRACTS

Section

- 8.2055 Types of Contracts

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- 8.2060 Duration of Contracts – General
- 8.2065 Cancellation of Contracts

SUBPART J: PROTESTS, DISPUTES AND CONTRACT CONTROVERSIES

- Section
- 8.2075 Protests
- 8.2076 Disputes and Contract Controversies

SUBPART K: PROCUREMENT FILES

- Section
- 8.2080 Public Procurement File
- 8.2084 Record Retention
- 8.2086 Filing with the Comptroller

SUBPART L: WORKING CONDITIONS

- Section
- 8.2560 Prevailing Wage

SUBPART M: GENERAL PROVISIONS RELATED TO CONSTRUCTION

- Section
- 8.3000 Notification of Procurement
- 8.3005 Construction and Construction Related Professional Services
- 8.3015 Method of Source Selection
- 8.3025 Retention Trust
- 8.3030 Construction Project Specifications
- 8.3035 Expenditure in Excess of Contract Price

SUBPART N: SELECTION OF CONSTRUCTION-RELATED
PROFESSIONAL SERVICES AND CONSTRUCTION MANAGEMENT SERVICES
AND DESIGN-BUILD ENTITIES

- Section
- 8.3040 Purpose
- 8.3043 Other Acts

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8.3045	Design-Build Written Determination
8.3050	Public Notice
8.3055	Design-Build Request for Proposal
8.3060	Preparation of Design-Build Scope and Performance Criteria
8.3065	Submittal Requirements
8.3070	Selection Procedures
8.3075	Evaluation Committee
8.3080	Evaluation Procedures
8.3085	Preliminary Evaluations
8.3090	Interviews
8.3095	Phase 1 Design-Build Evaluation
8.3100	Design-Build Shortlist
8.3105	Phase 2 Design-Build Evaluation
8.3110	Delegation of Architect/Engineer Evaluations
8.3115	Award of Design-Build Contract
8.3120	Small Projects
8.3125	Emergency Projects
8.3130	Construction Manager Procurement Limitations
8.3135	Publication of Award
8.3140	Design-Build Reports and Evaluations
8.3145	Federal Requirements
8.3150	Procurement Under the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act
8.3155	Procurement Under the Design-Build Procurement Act

SUBPART O: PREFERENCES

Section	
8.4505	Procurement Preferences
8.4510	Resident Vendor Preference
8.4526	Environmentally Preferable Procurement
8.4535	Qualified Not-for-Profit Agencies for Persons with Severe Disabilities
8.4545	Small Business
8.4557	Veterans
8.4570	Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities
8.4590	Notice of Preferences
8.4599	Domestic Products

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SUBPART P: ETHICS

Section	
8.5002	Continuing Disclosure; False Certification
8.5005	Bribery
8.5010	Felons
8.5011	Debt Delinquency
8.5012	Collection and Remittance of Illinois Use Tax
8.5013	Conflicts of Interest Prohibited by the Code
8.5014	Environmental Protection Act Violations
8.5015	Negotiations for Future Employment
8.5020	Exemptions
8.5023	Other Conflicts of Interest
8.5030	Revolving Door Prohibition
8.5035	Disclosure of Financial Interests and Potential Conflicts of Interest
8.5037	Vendor Registration, Certification and Prohibition on Political Contributions
8.5038	Lobbying Restrictions
8.5039	Procurement Communication Reporting Requirement
8.5060	Prohibited Bidders and Contractors

SUBPART Q: COOPERATIVE PURCHASING

Section	
8.5400	General
8.5420	Governmental Joint Purchasing Act Contracts
8.5440	Non-Governmental Joint Purchasing
8.5460	No Agency Relationship

SUBPART R: SUSPENSION AND DEBARMENT

Section	
8.5560	Suspension and Debarment

SUBPART S: VIOLATION OF STATUTE OR RULE

Section	
8.5620	Violation of Statute or Rule

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SUBPART T: HEARING PROCEDURES

Section	
8.5700	General
8.5710	Informal Process
8.5720	Hearing Officers
8.5730	Notice of Hearing
8.5740	Written Comments and Oral Testimony

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section	
8.7000	Severability
8.7010	Government Furnished Property
8.7015	Inspections

SUBPART V: PREQUALIFICATION

Section	
8.8001	Purpose
8.8005	Policy
8.8015	Prequalification Required
8.8017	Special Projects
8.8020	Confidentiality
8.8025	Sources for Determining Responsibility
8.8030	Licensing and Registration Actions
8.8035	Trade Codes and Profile Codes
8.8040	Prequalification by Office Locations
8.8045	Processing of Prequalification and Responsibility and Renewal Applications

SUBPART W: SUSPENSION, DEBARMENT, MODIFICATION OF ABILITY
TO BID, AND CONDITIONAL PREQUALIFICATION

Section	
8.8050	Actions Affecting Prequalification
8.8055	Causes for Suspension, Debarment, Modification of Ability to Bid or Offer, or Conditional Prequalification

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- 8.8057 Failure to Satisfactorily Perform Work on, or Breach of the Terms of, CDB Contracts, Private Contracts or Other Governmental Contracts
- 8.8060 Interim or Emergency Suspension or Modification Pursuant to Section 16 of the Capital Development Board Act
- 8.8065 Denial of Prequalification

SUBPART X: APPLICATION OF CDB ACTION

- Section
- 8.8070 General
- 8.8072 Violation of CDB Order
- 8.8075 Nullification of Prequalification
- 8.8080 Denial of Award of Contract
- 8.8082 Debarment
- 8.8085 Reapplication for Prequalification
- 8.8090 Extension of CPO Action
- 8.8092 Effect on Current Contracts
- 8.8095 Basis of Decisions
- 8.8098 Settlement

AUTHORITY: Implementing, and authorized by, Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25].

SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20324, effective October 1, 1984; amended at 9 Ill. Reg. 17332, effective October 29, 1985; amended at 12 Ill. Reg. 9864, effective May 27, 1988; amended at 13 Ill. Reg. 8403, effective May 22, 1989; amended at 22 Ill. Reg. 1169, effective January 1, 1998; old Part repealed and new Part adopted by emergency rulemaking at 22 Ill. Reg. 14333, effective July 16, 1998, for a maximum of 150 days; old Part repealed and new Part adopted at 22 Ill. Reg. 21848, effective December 4, 1998; amended at 26 Ill. Reg. 2606, effective February 8, 2002; recodified, pursuant to PA 96-795, from Capital Development Board 44 Ill. Adm. Code 910 to Chief Procurement Officer for Capital Development Board 44 Ill. Adm. Code 8 at 35 Ill. Reg. 10165; old Part repealed at 38 Ill. Reg. 10901, and new Part adopted at 38 Ill. Reg. 10903, effective May 7, 2014; recodified Title of the Part at 39 Ill. Reg. 5903; amended at 40 Ill. Reg. 14354, effective October 10, 2016.

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

CHIEF PROCUREMENT OFFICER FOR
CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENT

Section 8.2020 Small Purchase Limits

a) Small Purchase Limits

1) As authorized by law and under the jurisdiction of the CPO-CDB, individual contracts for construction, construction-related services, construction-related professional services, and construction management supplies or services not exceeding the following thresholds (hereinafter, "small purchase limit") may be made without notice or competition or use of other method of procurement as follows:

A1) Procurements for~~Any~~ construction-related professional services ~~contract~~ with an estimated basic professional services fee of less than \$25,000;

B2) Procurements for construction~~Construction~~ management contracts of less than \$25,000;

C3) Procurements for construction and construction-related services of less than \$100,000~~Construction not exceeding the small purchase level of \$30,000, adjusted for inflation each July 1 after 1998 in accordance with Code Section 20-20(b);~~

24) The CPO-CDB shall publish any change identified by the United States Department of Labor in the Consumer Price Index for All Urban Consumers for the period ending each December 31, and for each year thereafter on its website. That percentage change shall be used to recalculate the small purchase maximum for construction that shall be applicable for the fiscal year beginning the following July 1. The CPO-CDB shall publish on the Procurement Bulletin the current small purchase maximum.

b) Determination of Small Purchase Status

1) In determining whether a contract is under the small purchase limit, the stated value of the supplies or services, plus any optional supplies and services, and the value of any renewals, determined in good faith shall be

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utilized. When the value is calculated month-to-month or in a similar fashion, the amount shall be calculated for a 12 month period.

- 2) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the SPO determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the SPO must follow the procedures for sole source or emergency procurement, whichever is applicable, to complete the contract.
 - 3) If there is a repetitive need for small procurements of the same type (which may be evidenced by a pattern of small purchases, as determined by CDB or the SPO), CDB shall consult with the SPO to the State agency shall notify the SPO. The SPO shall consider whether issuing a competitive sealed bid or proposal for procurement of those needs is required or otherwise in the best interest of the State. Procurements shall not be artificially divided in order to constitute a small purchase.
- c) The CPO ~~shall~~may establish policies and procedures to manage the use of the small purchase method of source selection.
- 1) The policies shall include, but not be limited to, an informal request for quote process through which CDB shall:
 - A) identify the scope of work;
 - B) provide the same scope of work, cost estimates, and time for response to all contacted businesses;
 - C) consider registered Illinois small businesses, Business Enterprise (female/minority/disabled), and Veteran-owned firms;
 - D) attempt to obtain at least 3 quotes from businesses who can provide the work. If 3 businesses cannot be identified, CDB shall document in the procurement file why it was unable to obtain 3 quotes; and

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- E) attempt to not select the same business, including branch offices, more than once in the same calendar year unless CDB can document in the procurement file why the repeated use of the business is justified.
- 2) CDB prequalification of contractors is required for small purchases of construction services involving any of the 5 subdivisions of work outlined in Section 30-30(a) of the Code.
- 3) Documentation of each small purchase shall be maintained in the procurement file and each small purchase will be reviewed and approved by the Chief Procurement Officer.

(Source: Amended at 40 Ill. Reg. 14354, effective October 10, 2016)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Developmental Disabilities Services
- 2) Code Citation: 89 Ill. Adm. Code 144
- 3) Section Number: 144.102 Emergency Action: Amendment
- 4) Statutory Authority: Implementing Section 18.2 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/18.2] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5]
- 5) Effective Date of Emergency Rule: October 7, 2016
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department: October 6, 2016
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Due to the high costs associated with caring for clients who have the most severe developmental disabilities, this emergency rulemaking amends the rate computation methodology of the Adjustment Factor to provide increased rates to facilities who are serving high populations of clients with high medical/high personal care needs. The increased rate will help providers maintain operations by eliminating significant losses associated with caring for high medical/high personal care needs clients. The increased rate will also prevent clients with exceptional needs from most likely being transferred to unknown environments/settings or from being institutionalized in a State Operated Developmental Center at a much higher cost and further away from their families, friends and community. Studies have shown that the stress and anxiety of having to move from their homes compounded with the fragile medical conditions of many could have significant negative health consequences, including death. For these reasons, the Department finds that a threat exists to the public's safety and welfare. This rulemaking will address this threat by allowing providers to continue providing services and will increase the amount of funding eligible for federal, Medicaid matching funds.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- 10) A Complete Description of the Subject and Issues: 89 Ill. Adm. Code 144.102 provides qualifying criteria and methodology for rates for developmentally disabled clients that have high medical/high personal care needs. The proposed rulemaking amends the rate computation methodology of the Adjustment Factor to provide increased rates to facilities who are serving high populations of clients with high medical/high personal care needs. The amendment facilitates continued care and services to the most vulnerable developmentally disabled clients being cared for in facilities whose populations are comprised predominantly of clients with high medical/high personal care needs.
- 11) Are there any other rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.
- 13) Information and questions regarding this rule shall be directed to:

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Bldg., 3rd Floor
Springfield IL 62762

217/785-9772

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

The full text of the Emergency Amendment begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

TITLE 89: SOCIAL SERVICES
 CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
 SUBCHAPTER d: MEDICAL PROGRAMS

PART 144
 DEVELOPMENTAL DISABILITIES SERVICES

Section

144.1	Incorporation By Reference
144.5	Determination of Program (Active Treatment) Costs
144.25	ICF/MR Service Criteria
144.50	Inspection of Care and Rate Setting Appeal Process
144.75	Comprehensive Functional Assessments and Reassessments (Repealed)
144.100	Exceptional Care Needs of Clients with Developmental Disabilities
144.102	High Medical/High Personal Care Needs of Individuals with Developmental Disabilities
<u>EMERGENCY</u>	
144.105	Individual Program Plan (IPP) (Repealed)
144.125	Specialized Care – Behavior Development Programs
144.150	Specialized Care – Health and Sensory Disabilities
144.160	Base Nursing in Facilities Licensed as ICF/DD-16s including Small Scale (4 and 6 bed) ICF/DD-16s
144.165	Medication Administration in Facilities Licensed as ICF/DD-16s including Small Scale Residential Facilities (4 and 6 beds) ICF/DD-16s
144.175	Functional Needs
144.200	Service Needs – Medical Care (Repealed)
144.205	Service Needs – Medical and Therapy Services (Repealed)
144.225	Individual Rights (Repealed)
144.230	Reconciliation of Resident Funds
144.250	Discharge Planning/Maximum Growth Potential Plan (Repealed)
144.275	Reimbursement for Program (Active Treatment) Costs in Residential Facilities for Clients with Developmental Disabilities
144.300	Reimbursement for Program (Active Treatment) Costs in Small Scale Residential Facilities (4 and 6 bed) ICF/DD-16s
144.325	Capital Rate Calculation
144.TABLE A	Overview of Staff Intensity Scale of Maladaptive Behaviors
144.TABLE B	Staff Intensity Scale

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

144.TABLE C	IPP Outcomes (Repealed)
144.TABLE D	Guidelines for Determining Levels of Functioning
144.TABLE E	Standardized Adaptive Functional Assessment

AUTHORITY: Implementing Section 18.2 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/18.2] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

SOURCE: Adopted at 14 Ill. Reg. 4166, effective March 9, 1990; Section 144.275 recodified from 89 Ill. Adm. Code 146.225 at 14 Ill. Reg. 7651; amended at 14 Ill. Reg. 17988, effective October 29, 1990; amended at 15 Ill. Reg. 14084, effective September 24, 1991; emergency amendment at 15 Ill. Reg. 16148, effective October 22, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3497, effective February 28, 1992; amended at 16 Ill. Reg. 5898, effective March 20, 1992; amended at 17 Ill. Reg. 8478, effective June 1, 1993; amended at 17 Ill. Reg. 11480, effective July 16, 1993; emergency amendment at 17 Ill. Reg. 15126, effective September 2, 1993, for a maximum of 150 days; emergency amendment suspended effective October 12, 1993; emergency amendment repealed at 17 Ill. Reg. 22582, effective December 20, 1993; emergency amendment at 18 Ill. Reg. 11314, effective July 1, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16619, effective October 27, 1994; amended at 19 Ill. Reg. 2890, effective February 22, 1995; amended at 19 Ill. Reg. 7906, effective June 5, 1995; amended at 20 Ill. Reg. 6916, effective May 6, 1996; emergency amendment at 20 Ill. Reg. 7426, effective May 24, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 9072, effective June 28, 1996; amended at 20 Ill. Reg. 11326, effective August 1, 1996; amended at 20 Ill. Reg. 12465, effective August 30, 1996; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 22 Ill. Reg. 9287, effective May 15, 1998; amended at 23 Ill. Reg. 932, effective January 6, 1999; emergency amendment at 24 Ill. Reg. 6431, effective March 31, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13404, effective August 18, 2000; emergency amendment at 34 Ill. Reg. 16983, effective November 1, 2010, for a maximum of 150 days; amended at 35 Ill. Reg. 4005, effective February 23, 2011; emergency amendment at 40 Ill. Reg. 7855, effective May 13, 2016, for a maximum of 150 days; amended at 40 Ill. Reg. 13016, effective August 26, 2016; emergency amendment at 40 Ill. Reg. 14366, effective October 7, 2016, for a maximum of 150 days.

Section 144.102 High Medical/High Personal Care Needs of Individuals with Developmental Disabilities
EMERGENCY

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- a) For services provided on or after July 1, 2010, daily rates for qualifying ICFs/MR shall have their own reimbursement rates adjusted pursuant to this Section.
- b) **Qualifying Criteria**
In order to receive rate adjustments under this Section, facilities must meet the following criteria:
 - 1) Be a licensed ICF/MR, as defined in 77 Ill. Adm. Code 350, with more than 16 licensed beds and is not:
 - A) An SNF/PED, as defined in 77 Ill. Adm. Code 390; or
 - B) A campus facility, as defined under 89 Ill. Adm. Code 140.583.
 - 2) For the immediately preceding month, as documented in the remittance advice report, have:
 - A) An occupancy level of at least 93 percent of licensed ICFDD bed capacity; and
 - B) At least 93 percent of the ICFDD residents eligible for, and enrolled in, medical assistance under 89 Ill. Adm. Code 120.
 - 3) Based on the most recently conducted annual inspection of care survey, at least 60 percent of the residents of the facility must qualify as Medical Level III.
- c) **Adjustment Methodology**
The program and support components of the per diem rate for qualifying facilities shall be replaced with the adjusted program and support components, determined as follows:
 - 1) **Adjustment Factor**
The adjustment factor for a facility shall be the product of the difference between the Medical Level III percentage and 60 percent and:
 - A) For facilities with a Medical Level III percentage less than 80 percent – ~~3.90-600~~; or

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

- B) For all other facilities ~~= 5.04.700.~~
- 2) Adjusted Program Component
The adjusted program component shall equal the product of the following:
- A) The program component of the per diem rate, as determined under Section 144.275; and
- B) The sum of 1.000 plus the adjustment factor for the facility, as determined in subsection (c)(1).
- 3) Adjusted Support Component
The adjusted support component shall equal the SNF/PED ceiling for the geographic area in which the facility is located.
- 4) Subsequent Adjustments
Adjusted program and support components shall be redetermined when:
- A) Changes to the program or support rate components are required in accordance with 89 Ill. Adm. Code 153; and
- B) The percentage of the residents who are classified as Medical Level III changes as a result of the facility's annual inspection of care survey. The adjusted program component shall be recalculated and effective the first day of the month following the Medical Level III determinations.
- C) The percentage of residents who are classified as Medical Level III changes as a result of the facility's annual inspection of care survey. The adjusted program component shall be recalculated and effective the first day of the month following the Medical Level III determinations.
- D) All high medical/high personal care rates for residents classified as Medical Level III will be reviewed and updated for changes in the facility population at least once annually upon issuance of respective facility Inspection of Care surveys.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AMENDMENT

(Source: Amended by emergency rulemaking at 40 Ill. Reg. 14366, effective October 7, 2016, for a maximum of 150 days)

CHIEF PROCUREMENT OFFICER FOR
CAPITAL DEVELOPMENT BOARD

NOTICE OF MODIFICATION TO MEET THE OBJECTION OF
THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Chief Procurement Officer for Capital Development Board
- 2) Code Citation: 44 Ill. Adm. Code 8
- 3) Section Number: 8.2020 Proposed Action:
Amendment
- 4) Date Notice of Proposed published in the *Illinois Register*: 40 Ill. Reg. 6294; April 15, 2016
- 5) Date JCAR Statement of Objection published in the *Illinois Register*: 40 Ill. Reg. 10342; July 27, 2016
- 6) Summary of Action Taken by the Agency: Modification

At its meeting on July 12, 2016, the Joint Committee on Administrative Rules objected to the proposed rule.

In response to the Joint Committee's objection, the Chief Procurement Office has elected to modify the rule to require policies to manage the use of the small purchase method of source selection, including requiring documentation of how each small purchase was made. The policies include: identifying the scope of work, providing the same notice and time for response from contacted businesses, consideration of small and diverse businesses, obtaining quotes from at least 3 businesses that can provide the work, and not selecting the same business more than once in a calendar year.

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 40, Issue 43 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

PROPOSED RULES

35 - 365	14142
35 - 365	14243
89 - 112	14311

ADOPTED RULES

44 - 8	10/10/2016	14354
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EMERGENCY RULES

89 - 144	10/7/2016	14366
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**AGENCY MODIFICATION IN
RESPONSE TO A STATEMENT OF
OBJECTION**

44 - 8	14373
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