

# 2018

# ILLINOIS

# REGISTER

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## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENT

- 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) Section Number: 365.250                      Adopted Action: Amendment
- 4) Statutory Authority: Implementing and authorized by Section 19.1 through 19.9 of the Environmental Protection Act, 415 ILCS 5/19.1 through 19.9.
- 5) Effective Date of Rule: July 20, 2018
- 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 on file in the Illinois Environmental Protection Agency's principal office located at 1021 North Grand Avenue East, P.O. Box 19276, Springfield IL, 62794-9276, and is available for public inspection.
- 9) Notice of Proposal published in the *Illinois Register*: 42 Ill. Reg. 7272; April 20, 2018
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested.
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The Agency amends the additional subsidization requirements for the water pollution control loan program to match recent amendments to the Clean Water Act. Pub.Law 114-322. This amendment expands the types of subsidies and types of eligible recipients. The amendments also broaden the affordability criteria

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by removing the requirement that the public loan applicant have a median household income less than the state average.

- 16) Information and questions regarding this adopted rule shall be directed to:

Joanne Olson  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield IL 62794-9276

217/782-5544

The full text of the Adopted Amendment 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	<a href="#">Additional Subsidization</a> <del>Principal Forgiveness</del>
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
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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;

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amended at 40 Ill. Reg. 6577, effective April, 2016; former Part repealed at 41 Ill. Reg. 7980 and new Part adopted at 41 Ill. Reg. 7983, effective July 1, 2017; amended at 42 Ill. Reg. 14442, effective July 20, 2018.

## SUBPART B: FINANCING TERMS

**Section 365.250 Additional Subsidization~~Principal Forgiveness~~**

- a) The Agency may provide additional subsidization as provided in section 603(i) of the CWA or as otherwise prescribed by USEPA in the annual capitalization grant agreement.~~When the Agency provides assistance to a public loan recipient, the Agency shall, until the available principal forgiveness funding established in the Capitalization Grant is exhausted, provide additional subsidization in the form of principal forgiveness to a public loan recipient to finance a project or activity eligible for assistance under 33 USC 1383(c)(1) that meets the affordability criteria of subsection (b).~~
- b) Pursuant to section 603(i)(2) of the CWA, the Agency adopts the following affordability criteria.~~Affordability Criteria:~~
- 1) To be eligible for additional subsidization under section 603(i)(1)(A)(i) of the CWA, a public loan recipient must~~In order to qualify for principal forgiveness under subsection (a), a public loan recipient must meet the following requirements:~~
- A) have 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; and
- B) The MHI of the public loan applicant's service population is less than or equal to the statewide MHI; and
- B~~C~~) score~~Score~~ at least 21 points based on the following criteria:
- i) Median Household Income

Points	MHI as % of Statewide MHI
0	Above 100%

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5	95-99.99%
10	90-94.99%
15	85-89.99%
20	80-84.99%
25	75-79.99%
30	70-74.99%
35	65-69.99%
40	60-64.99%
45	55-59.99%
50	50-54.99%
55	45-49.99%
60	0-44.99%

## ii) Population

<b>Points</b>	<b>Service Population</b>
<u>0</u>	<u>Above 30,000</u>
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

<b>Points</b>	<b>Additional Criteria</b>
1	Unemployment rate is greater than the statewide average

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	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 additional subsidization provided~~principal forgiveness~~ under section 603(i)(1)(A)(i) of the CWA~~subsection (a)~~ will be capped for qualifying public loan recipients and applied only to eligible projects costs as follows:

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

- c) Notwithstanding the additional subsidization~~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 additional subsidization~~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 additional subsidization~~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 prioritize public loan applicants who score at least 21 points under the affordability criteria in subsection (b), and shall award additional



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~~subsidization~~~~principal forgiveness~~ to loan applicants in the order that loan applicants have been issued a loan by the Agency pursuant to Section 365.410.

(Source: Amended at 42 Ill. Reg. 14442, effective July 20, 2018)