Environmental Protection Agency

§ 35.3160 Cash draw rules.

(a) Loans. The State may draw cash from the LOC when the SRF receives a request from a loan recipient, based on incurred costs, including prebuilding and building costs.

(b) Refinance or purchase of municipal debt. (1) Cash draw for completed construction. Except as indicated in paragraph (b)(2) of this section, cash draws shall be made at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to § 35.3155(c), and up to the portion of the LOC committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs.

(2) The State may immediately draw cash for up to five percent of each fiscal year’s capitalization grant or two million dollars, whichever is greater, to refinance or purchase local debt.

(3) Projects or portions of projects not constructed. The State may draw cash based on incurred construction costs, as set forth in § 35.3160(a).

(4) Incremental disbursement bonds. For the purchase of incremental disbursement bonds from local governments, cash draws will be based on a schedule that coincides with the rate at which construction related costs are expected to be incurred for the project.

(c) Purchase of insurance. The State may draw cash to purchase insurance as premiums are due.

(d) Guarantees and security for bonds. (1) Cash draw in the event of default. In the event of an imminent default in debt service payments on the guaranteed/secured debt, the State can draw cash immediately up to the total amount of the LOC committed to the guarantee/security. If a balance remains in the guarantee portion of the LOC reserve after the default is covered, the State must negotiate a revised schedule for the remaining amount of the guarantee/security.

(2) Cash draw in the absence of default. (i) The State can draw cash up to the amount of the LOC dedicated for the guarantee or security in accordance with a schedule based on the national title II annual outlay rate (Yr 1: 7%; Yr 2: 35%; Yr 3: 26%; Yr 4: 20%; Yr 5: 12%), or actual construction cost. In the latter case, the amount of the cash draw would be the actual construction costs multiplied by the Federal share of the reserve multiplied by the ratio of the reserve to either the amount guaranteed or the proceeds of the bond issue.

(ii) In addition, in the case of a security, the State can identify a group of projects whose value equals approximately the total of that portion of the LOC and the State match dedicated as a security. The State can then draw cash based on the incurred construction costs multiplied by the Federal share of the reserve multiplied by the ratio of the reserve to either the amount guaranteed or the proceeds of the bond issue.

(3) Aggressive leveraging exception. Where the cash draw rules discussed in § 35.3160(d) would significantly frustrate a State’s program, the Agency may permit an exception to these cash draw rules and provide for a more accelerated cash draw, where the State can demonstrate that:
§ 35.3165 Reports and audits.

(a) Annual report. The State must provide an Annual Report to the RA beginning the first fiscal year after it receives payments under title VI. The State should submit this report to the RA according to the schedule established in the grant agreement.

(b) Matters to establish in the annual report. In addition to the requirements in section 606(d) of the Act, in its annual report the State must establish that it has:

1. Reviewed all SRF funded section 212 projects in accordance with the approved environmental review procedures;
2. Deposited its match on or before the date on which each quarterly grant payment was made;
3. Assured compliance with the requirements of §35.3135(f);
4. Made binding commitments to provide assistance equal to 120 percent of the amount of each grant payment within one year after receiving the grant payment pursuant to §35.3135(c);
5. Expended all funds in an expeditious and timely manner pursuant to §35.3135(d); and
6. First used all funds as a result of capitalization grants to assure maintenance of progress toward compliance with the enforceable requirements of the Act pursuant to §35.3135(e).

(c) Annual review—(1) Purpose. The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP and Annual Report, and to determine compliance with the terms of the capitalization grant agreement. The RA will complete the annual review according to the schedule established in the grant agreement.

(2) Records access. After reasonable notice by the RA, the State or assistance recipient must make available to the EPA such records as the RA reasonably requires to review and determine State compliance with the requirements of title VI. The RA may conduct onsite visits as needed to provide adequate programmatic review.

(d) Annual audit. (1) At least once a year the RA (through the Office of the Inspector General) will conduct, or require the State to have independently conducted, a financial and compliance audit of the SRF and the operations of the SRF. If the State is required to have an independently conducted audit performed, the State may designate an independent auditor of the State to carry out the audit or may contractually procure the service.

(2) The auditor can be a certified public accountant, a public accountant licensed on or before December 31, 1970, or a governmental auditor who meets the qualification standards (Government Auditing Standards). In addition,