



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

Jan. 19, 2023

Rulemaking, Action Item C Clean Water State Revolving Fund Rulemaking 2022

Table of Contents

DEQ Recommendation to the EQC.....	2
Introduction	2
Statement of Need	4
Rules Affected, Authorities, Supporting Documents.....	5
Fee Analysis.....	6
Statement of Fiscal and Economic Impact	7
Racial Equity Statement.....	12
Environmental Justice Considerations	13
Federal Relationship	14
Land Use.....	15
EQC Prior Involvement.....	16
Advisory Committee	17
Public Engagement	19
Implementation.....	23
Five-Year Review.....	24
Accessibility Information.....	25

DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules as seen in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

Language of Proposed EQC motion:

“I move that the commission adopt the proposed rule amendments as seen in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.”

Introduction

The Oregon Department of Environmental Quality Clean Water State Revolving Fund program is proposing to modify its rules in OAR Chapter 340, Division 54. The proposed rule changes focus on four sections of the Oregon Clean Water State Revolving Fund program:

- [340-054-0025](#) Clean Water State Revolving Fund Loans: Intended Use Plan (IUP) and Project Priority List
- [340-054-0026](#) Clean Water State Revolving Fund Loans: CWSRF Project Ranking Criteria for Non-Planning Loans
- [340-054-0027](#) Clean Water State Revolving Fund Loans: CWSRF Project Ranking Criteria for Planning Loans
- [340-054-0065](#) Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

The federal Bipartisan Infrastructure Law (H.R. 3684: Infrastructure Investment and Jobs Act) was signed into law Nov. 15, 2021, and includes additional funding for Clean Water State Revolving Fund programs annually over five years with new requirements to increase the amount of principal forgiveness for eligible borrowers. The law took effect in May 2022 and the Oregon CWSRF intends to apply for BIL supplemental capitalization grant funding in early 2023. CWSRF is conducting this rulemaking primarily to allow flexibility for the program to meet new requirements regarding principal forgiveness, which the rule currently limits on a per loan basis.

The proposed rules would allow the program to provide more principal forgiveness for loans to finance water quality and infrastructure projects throughout Oregon. Principal forgiveness is defined in OAR 340-054-0010 Definitions, (29): “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal, which results in a reduction in the amount owed on a loan. Oregon CWSRF can provide principal forgiveness to eligible borrowers that meet affordability criteria, projects that meet green project eligibility based on EPA criteria, or to address ratepayer hardship. Principal forgiveness is an incentive, particularly for disadvantaged communities that meet affordability criteria under the Clean Water Act, to utilize CWSRF financing for water quality and infrastructure improvement projects.

The proposed rules also allow the program to address Oregon’s and EPA’s priorities to revise affordability criteria and project ranking and scoring to further ensure funding is targeted for disadvantaged communities that meet affordability criteria under the Clean Water Act. The rule

changes would enable the program to incorporate environmental justice metrics into affordability criteria and project ranking and scoring to further direct funding and resources to economically distressed, water pollution burdened and health burdened communities. New limits for principal forgiveness, changes to affordability criteria and project ranking and scoring will be documented in the program's Intended Use Plan that describes how DEQ proposes to fund projects through the CWSRF and includes a project priority list of applications received. The Intended Use Plan is also made available for public comment as required by EPA. DEQ is in the process of updating its Intended Use Plan and if the proposed rule changes are adopted the Plan's update will be published in March 2023.

Statement of Need

What need would the proposed rule address?

The proposed rule addresses the need to meet new requirements of the Bipartisan Infrastructure Law for the Oregon CWSRF program. The new law requires CWSRF programs to provide 49 percent of new supplemental capitalization grant funding amount as principal forgiveness for loans for the program. CWSRF Oregon Administrative Rule currently limits the amount of principal forgiveness the program can provide on a per loan basis to 50 percent of the loan up to \$500,000. The program must increase limits for the amount of principal forgiveness on a per loan basis to be able to meet the new federal requirement. Additionally, most loan amounts are greater than \$500,000 and under current rules, many would not meet the 49 percent threshold.

Specifically, the rule revisions would:

- Remove limits for principal forgiveness on a per loan basis from rule and allow the program to document how it will meet the new principal forgiveness requirements within the program's Intended Use Plan, to meet federal requirements.
- Enable any additional new requirements associated with future capitalization grant funding to similarly be documented in and subject to public comment through the program's Intended Use Plan, rather than the rulemaking process.
- Allow the program the ability to adjust affordability criteria, project ranking and scoring and intended use plan to address state and federal priorities, including incorporating environmental justice metrics into program practice in the Intended Use Plan.

How would the proposed rule address the need?

The proposed rules would allow DEQ to take the actions listed above and meet the legal obligations and intent of the federal legislation.

How will DEQ know the rule addressed the need?

DEQ will know the rule addressed the need by having a rule that enables CWSRF to provide more principal forgiveness to borrowers that meet affordability criteria and is in compliance with the new requirements and priorities of the Bipartisan Infrastructure Law. EPA conducts an annual Program Evaluation Report to review CWSRF program activities and ensure the program is meeting requirements for federal capitalization grant funding, including supplemental capitalization grant funding under the Bipartisan Infrastructure Law. EPA will also review the program's Intended Use Plan, including amount of principal forgiveness for borrowers, affordability criteria, and project ranking and scoring criteria, at least annually to ensure the program continues to meet federal requirements and priorities.

Rules Affected, Authorities, Supporting Documents

Lead division

Oregon DEQ Water Quality Division

Program or activity

Community and Program Assistance, Clean Water State Revolving Fund Program

Chapter 340 action

Amend				
340-054-0010	340-054-0025	340-054-0026	340-054-0065	
Repeal				
340-054-0027				

Statutory Authority - ORS				
468.020	468.065	468.440		

Statutes Implemented - ORS				
468.423 – 468.440				

Documents relied on for rulemaking

Document title	Document location
Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law, Radhika Fox Assistant Administrator, U.S. Environmental Protection Agency	https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf
Clean Water State Revolving Fund Advisory Committee Meeting Information – CWSRF 2022 Proposed Rule Changes	Oregon CWSRF 2022 Rulemaking Webpage
Oregon Environmental Quality Commission Clean Water State Revolving Fund Update - Information Item July 22, 2022	https://www.oregon.gov/deq/about-us/eqc/Pages/07212022.aspx

Fee Analysis

This rulemaking does not involve fees.

Statement of Fiscal and Economic Impact

Fiscal and Economic Impact

This rulemaking would enable the CWSRF program to meet new federal requirements and priorities under the Bipartisan Infrastructure Law (BIL) signed into law in November 2021. The BIL will provide the CWSRF program more funding for below-market interest rate loans and requires the program to provide more principal forgiveness for eligible borrowers. The BIL will provide an estimated \$125,324,381 of additional supplemental capitalization grant funding for the Oregon CWSRF program over the next five years and requires 49 percent of this funding to be awarded as principal forgiveness. DEQ's Clean Water State Revolving Fund program estimates positive fiscal and economic impacts from the proposed rule changes to the CWSRF. Proposed rule changes focus on:

Principal forgiveness – to enable the program to meet new federal requirements under the Bipartisan Infrastructure Law and adapt to any future federal capitalization grant requirements. The rule changes (OAR 340-054-0065) will remove limits of principal forgiveness on a per loan basis to enable the program to increase the amount of principal forgiveness on a per loan basis and so that DEQ can meet the new federal requirements for the program under BIL.

Affordability criteria – to remove detail from rule (OAR 340-054-0065) to allow the program to incorporate environmental justice metrics into affordability criteria being developed to be documented in the program's Intended Use Plan. This approach of documenting affordability criteria in the Intended Use Plan is the national norm for CWSRF programs and meets federal requirements. The Intended Use Plan is updated three times per year and the process involves public notice and comment with each update. EPA reviews the IUP to ensure the program continues to meet federal requirements.

Project ranking and scoring – to remove detail from rule (OAR 340-054-0026, OAR 340-054-0027) and document details of project ranking and scoring in the program's Intended Use Plan, which is subject to public notice and comment. This approach is the national norm and meets federal requirements.

Intended Use Plan – to remove detail from rule in the section specifically related to the Intended Use Plan (OAR 340-054-0025) regarding project ranking and scoring and include details of project ranking and scoring in the program's intended use plan, which will meet federal requirements. The Intended Use Plan includes a public notice process that provides opportunity for public input on every IUP.

The rule changes regarding principal forgiveness and affordability criteria will likely have positive fiscal impacts on communities. The proposed rule changes will enable the program to increase amount of principal forgiveness awarded on a per loan basis for eligible borrowers that meet affordability criteria, including economically distressed communities. This will likely have a direct fiscal impact by providing more subsidy in the form of principal forgiveness for loans, making financing for water pollution control projects more

affordable, and reduce debt burden on communities, particularly economically distressed communities.

In addition, the rule changes will enable the program to incorporate additional environmental justice metrics into affordability criteria to further benefit economically distressed, water pollution burdened and health burdened communities. These metrics are being developed with input from the CWSRF standing advisory committee.

The CWSRF program itself would not experience significant fiscal impacts as a direct result of the rule changes and will continue to be able to maintain the perpetuity of the fund. No other DEQ programs would be impacted.

The rule changes will likely have indirect economic benefits to the general public and indirect economic benefits to large and small business owners. CWSRF provides financing at below market-rates to eligible public agencies for water pollution control projects and Community Development Financial Institutions for septic system repair, replacement or connection to public sewer. BIL provides an additional \$20,271,000 for below-market rate interest financing in Federal Fiscal Year 2022, increasing the amount of affordable financing for communities to plan, design and construct water pollution control projects. DEQ CWSRF intends to apply for this federal supplemental capitalization funding from EPA in early 2023.

There may be indirect economic benefits to business owners including contractors that may be involved with planning, development and construction of projects funded by CWSRF. CDFIs and their sub borrowers will have access to affordable below-market rate loans that can assist with repairs and potentially generate business activity near the project locations, including hiring septic system repair companies and purchasing equipment.

Statement of Cost of Compliance

State agencies

Direct Impacts

The revolving nature of the loan fund makes the Clean Water State Revolving Fund program self-sustaining in terms of program administration and administrative costs. The proposed rules would have no fiscal impacts to the program and no impacts to other DEQ programs or other State agencies.

Indirect impacts

No known indirect impacts.

Local governments

Direct impacts

The proposed rule changes would likely result in a direct positive fiscal impact on eligible public agencies for financing under the CWSRF program, including local governments,

municipalities, special districts, and intergovernmental agencies. The rule changes will allow the program to provide more below-market rate financing to local governments for water pollution control projects, and more principal forgiveness for loans to borrowers that meet affordability criteria, including economically distressed communities.

Indirect impacts

Indirect impacts to local governments may include an increase in infrastructure projects with more affordable financing to improve water quality, public health and economic development opportunities in communities throughout Oregon.

Public

Direct impacts

The general public is not eligible to borrow CWSRF loan funds directly, therefore, there would be no direct impacts to the public from the proposed rule changes.

Indirect impacts

Contractors could see an indirect positive impact with an increase in new contracts for construction creating additional economic benefits for the public.

Large businesses - businesses with more than 50 employees

Direct impacts

The proposed rules would have no direct economic impact on large businesses because they are not eligible to borrow CWSRF loan funds. No known direct impacts.

Indirect impacts

There may be indirect beneficial economic impacts to businesses providing services in the areas near a project funded by the CWSRF. Manufacturers, suppliers, and construction-related businesses may benefit from an increase in contracts if they are hired to work on a project funded by the CWSRF.

Small businesses – businesses with 50 or fewer employees

ORS 183.336 - Cost of Compliance for Small Businesses

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

No direct impacts. Small businesses are not eligible to borrow the program's funds. Engineering and construction-related businesses may benefit from an increase in contracts with funding under the CWSRF, which would increase over the next five years.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

No additional activities are required to comply with the proposed rules. The Bipartisan Infrastructure Law will require additional reporting for borrowers funded by CWSRF. Oregon CWSRF will conduct additional reporting and recordkeeping specific to BIL funds, which is not directly a result of the rule changes.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

No additional resources are required for compliance with the proposed rules.

d. Describe how DEQ involved small businesses in developing this proposed rule.

No small businesses directly participated in developing the proposed rules because the rules do not directly affect them. CWSRF has convened a rulemaking advisory committee representing diverse stakeholders including local governments, state and federal agencies, and organizations involved with providing health, housing, energy and environmental services for communities throughout Oregon, including tribes and farmworker populations. The committee will continue serving as a standing advisory committee beyond the rulemaking to provide input and guidance to the CWSRF program.

Documents relied on for fiscal and economic impact

Document title	Document location
EPA guidance and policy memos for the Clean Water State Revolving Fund loan program	DEQ Headquarters, 700 NE Multnomah, Suite 600, Portland, OR 97232
Clean Water State Revolving Fund Advisory Committee Documents, Meeting Summary, Presentations	Oregon CWSRF 2022 Rulemaking Webpage

Advisory committee fiscal review

DEQ appointed a rulemaking advisory committee comprised of 12 people. Advisory committee membership is listed in later sections of this report.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement at the Sept. 30, 2022, Rulemaking Advisory Committee meeting and determined the proposed rules would

likely have a positive impact on local governments and would not have a significant adverse impact on small businesses in Oregon, as documented in the meeting summary.

Housing Cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

DEQ determined the proposed rules would have no effect on the development costs because the proposed rules only affect the cost of lending CWSRF loan funds to eligible borrowers as public agencies for water quality and infrastructure projects and CDFIs for septic system repair, replacement or connection to sewer. There is no direct impact on housing cost.

Racial Equity Statement

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

Scope and issues are addressed by the rule

The proposed rules would enable the program to meet new federal requirements and priorities under the Bipartisan Infrastructure Law passed in November 2021. Two key elements of the new law are additional funding to DEQ to support below-market interest rate loans and increased allowance of principal forgiveness for eligible borrowers. The proposed rule changes would allow the program to incorporate environmental justice metrics into affordability criteria to further benefit economically distressed, water pollution burdened and health burdened communities. In Oregon, these community profiles are often overlapping with communities of color historically underserved and excluded from government processes. The proposed changes also revise program rules to allow incorporation of these, and other, federal changes in program operational materials, rather than rule, through the Intended Use Plan mechanism. This flexibility would allow the program to update operational requirements and processes more efficiently than changes made through rulemaking, though substantive policy changes will continue to be done by the commission through rule.

Documents relied on for racial equity statement

Document title	Document location
EPA guidance and policy memos for the Clean Water State Revolving Fund loan program	DEQ Headquarters, 700 NE Multnomah, Suite 600, Portland, OR 97232
Clean Water State Revolving Fund Advisory Committee Documents, Meeting Summary, Presentations	Oregon CWSRF 2022 Rulemaking Webpage

Environmental Justice Considerations

Environmental Justice analysis

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

The Oregon CWSRF program is developing environmental justice metrics to incorporate into program practice. While the proposed rules do not include specific language regarding environmental justice metrics, the rulemaking would enable the program to include environmental justice metrics into affordability criteria, project ranking and scoring and Intended Use Plan. The program intends to use environmental justice metrics to target funding, outreach and technical assistance for disadvantaged and historically underserved communities to access funding for water pollution control projects in Oregon and help ensure all people in Oregon have equitable environmental and public health protections.

Federal Relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules are not different from or in addition to federal requirements.

Land Use

Considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objects, or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.

EQC Prior Involvement

DEQ shared information about this rulemaking with the Environmental Quality Commission at two EQC meetings: an informational item April 7, 2022, focusing on the Bipartisan Infrastructure Law introducing CWSRF rulemaking, and an information item July 22, 2022 for an update on the CWSRF rulemaking and Bipartisan Infrastructure Law implementation.

Advisory Committee

Background

The CWSRF program convened the Oregon CWSRF 2022 Rulemaking Advisory Committee. The committee included representatives from local, state, and federal agencies, organizations and associations providing services regarding health, housing, energy, water, environmental quality, sustainability, utilities, rural, low-income, agriculture workers and Tribes in Oregon. CWSRF conducted three RAC meetings for review and input on the proposed rule changes, which received feedback from the committee. All RAC meetings included opportunity for public comment. The committee will continue serving as a standing advisory committee to provide input regarding changes for the program beyond the rulemaking.

Clean Water SRF Rulemaking Advisory Committee	
Name	Representing
April Snell	Oregon Water Resources Congress
LaDonn McElligot	USDA Rural Development
Karen Lewotksy	Oregon Environmental Council
RosAnna Noval	Rural Community Assistance Corporation
Rose Ojeda	CASA of Oregon
Joy Aldrich	Oregon Housing and Community Services Department
Jason Green	Oregon Association of Water Utilities
Tamra Mabbott	Morrow County
Celeste Davis	Northwest Portland Area Indian Health Board
Tracy Rainey	League of Oregon Cities/Oregon Association of Clean Water Agencies/Special Districts Association of Oregon
Dylan Kruse	Sustainable Northwest
Sara O'Brien	Willamette Partnership

Oregon CWSRF 2022 Rulemaking Webpage: [Oregon CWSRF 2022 Rulemaking Webpage](#)

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - Rulemaking
 - DEQ Public Notices
 - Clean Water State Revolving Fund
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee reviewed the Racial Equity Statement and proposed rules and were supportive of the statements and this proposed rulemaking.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Oct. 28, 2022, filing notice with the Oregon Secretary of State for publication in the November 2022 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Clean Water State Revolving Fund 2022](#);
- Emailing approximately 24,033 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notices
 - Clean Water State Revolving Fund
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senator Kate Lieber, Chair, Senate Interim Committee on Energy and Environment
 - Senator Lynn Findley, Vice-Chair, Senate Interim Committee on Energy and Environment
 - Representative Pam Marsh, Chair, House Interim Committee on Environment and Natural Resources
 - Representative Zach Hudson Vice-Chair, House Interim Committee on Environment and Natural Resources
 - Representative David Brock-Smith Vice-Chair, House Interim Committee on Environment and Natural Resources
 - Representative Ken Helm, Chair, House Interim Committee on Agriculture, Land Use, and Water
 - Representative Mark Owens, Vice-Chair, House Interim Committee on Agriculture, Land Use, and Water
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public Hearing

DEQ held one public hearing and received no comments at the hearing. Later sections of this document include a summary of the comments received during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

Presiding Officers' Record

Hearing 1

Date	Nov. 15, 2022
Place	Virtual via Zoom
Start Time	2:30 p.m.
End Time	3 p.m.
Presiding Officer	Chris Marko, CWSRF Program Coordinator

Presiding Officer's report

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice. Three people from the public attended the public hearing by teleconference and no one commented orally or submitted written comments at the hearing.

Summary of Public Comments and DEQ Responses

Public comment period

DEQ accepted public comment on the proposed rulemaking from Oct. 28, 2022, until 4 p.m. on Nov. 28, 2022. DEQ received three comments from commenters during the comment period. DEQ did not change the proposed rules in response to comments.

Comment 1

Dave Stone

Will this rule change help Morrow County deal with the Port of Morrow fiasco? If not, how about a rule to help bring equity to those minority citizens in that county? Or do they not count as deserving citizens?

DEQ Response

The rule change is not intended to address one entity, community or area of the state. Ports organized under Oregon Revised Statutes 777 are eligible for funding under the Clean Water State Revolving Fund program. The rule change will allow the program to increase principal forgiveness to eligible borrowers under OAR 340-054-0065(12). CWSRF intends to incorporate environmental justice considerations into program practice to further address needs of disadvantaged and undeserved communities beyond this rulemaking to help ensure communities are equally protected from environmental and health risks in Oregon.

Comment 2

Susan Brewer

When would this be forgiveness and how is it reinstated if there is no continued compliance. There need to be a long period of evaluation by the state which is continued and if no longer in compliance fines and the loan gets reinstated

DEQ Response

The program may provide principal forgiveness to eligible borrowers whether or not they are in compliance with their water quality permit. Compliance and enforcement actions are addressed under separate authorities and processes. The proposed rules are consistent with the federal Clean Water Act CWSRF program eligibilities and requirements for principal forgiveness in OAR 340-054-0065(12)(a) and (b). Except as specified in OAR 340-054-0065(b), the following public agency borrowers are eligible for principal forgiveness:

(A) Public agency borrowers that are an eligible recipient and meet affordability criteria as specified in subsection (c) of this section of the rule;

(B) Public agency borrowers that are an eligible recipient with a project that DEQ determines implements a process, material, technique, or technology to address water-efficiency goals, energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction; or

(C) Public agency borrowers that are an eligible recipient and that do not meet the requirements of paragraph (a)(A) or (a)(B) in this section of the rule but have individual ratepayers who will experience financial hardship from a rate increase that financing a project causes. Applicants qualifying under this section must have an established ratepayer hardship assistance program. DEQ will review the applicant's ratepayer hardship assistance program for duration and effectiveness.

Comment 3

**Susie Smith, Oregon Association of Clean Water Agencies;
Mark Landauer, Special Districts Association of Oregon;
Michael Martin, League of Oregon Cities**

Letter: On behalf of the Oregon Association of Clean Water Agencies, the League of Oregon Cities, and the Special Districts Association of Oregon, we extend our appreciation for providing the opportunity to be represented on the Clean Water State Revolving Fund Rulemaking Advisory Committee (RAC). We are grateful for the opportunity to provide public comments on the proposed draft rules as outlined in the Notice of Proposed Rulemaking dated October 28, 2022. The proposed changes to Oregon Administrative Rule (OAR) 340, Division 54, will allow the Oregon Department of Environmental Quality (DEQ) to be more effective, efficient, and responsive to the anticipated increase in federal funding for Oregon's Clean Water State Revolving Fund. This increased funding, which was made possible through passage of the federal Bipartisan Infrastructure Law (P.L. 117-58; 2021), represents an important opportunity to better address Oregon's unmet water infrastructure needs. This funding represents a significant increase over the typical annual capitalization grant amount and requires DEQ to provide at least 49 percent of this enhanced funding via principal forgiveness loans. As a result, DEQ will need to exercise additional flexibility to get these funds out to Oregon communities. The proposed draft rules 1.) Provide an appropriate level of additional flexibility by extending principal forgiveness eligibility for all planning loans, 2.) Eliminate the current per loan caps/limitations for principal forgiveness by moving certain eligibility criteria into the Intended Use Plan (as opposed to in administrative rule). Our organizations are very much supportive of these efforts as they will increase the likelihood and amount of meaningful investment, including for green infrastructure projects and projects located in small, rural and disadvantaged communities. We again appreciate the opportunity to have participated in this process. In addition, we appreciate the opportunity to express both our appreciation to DEQ staff for a thoughtful and well-organized rulemaking process, and our support for the proposed draft rules.

DEQ Response

DEQ acknowledges representation of these organizations on the CWSRF Rulemaking Advisory Committee 2022 and appreciates the comment and support for the rule.

Implementation

Notification

The proposed rules would become effective upon filing.

DEQ would notify affected parties by:

- Emailing approximately 24,033 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notices
 - Clean Water State Revolving Fund
- Emailing advisory committee members

Systems and Stakeholders

Website - DEQ staff to add notification to relevant webpages

Affected parties – Public agencies by e-mail

DEQ staff - Water Quality staff by email

Five-Year Review

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts all the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4).

Accessibility Information

You may review copies of all documents referenced in this announcement at:
Oregon Department of Environmental Quality
700 NE Multnomah St., Ste. 600
Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call or e-mail Chris Marko, 503-880-6060, chris.marko@deq.oregon.gov.

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

Chapter 340

Division 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

340-54-0010

Definitions

The following definitions apply to this rule division:

- (1) “Applicant” means a public agency or qualified institution that has applied for a CWSRF loan under this division.
- (2) “Available sewer” has the meaning given in ORS 454.779.
- (3) “Borrower” means a public agency or qualified institution that has signed a CWSRF loan agreement with DEQ.
- (4) “Change order” means a written order, and supporting information from a borrower, to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.
- (5) “Checklist of loan application requirements” means a list that DEQ provides of all documents an applicant must submit to DEQ to receive a loan offer under this division.
- (6) “Clean Water Act” or “CWA” means the federal Water Pollution Control Act, 33 U.S.C. § 1251 – § 1387.
- (7) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.
- (8) “Community development financial institution borrower” or “CDFI Borrower” means a qualified institution that has signed a CWSRF loan agreement with DEQ.
- (9) “Community development financial institution loan” or “CDFI loan” means a loan with proceeds made available from a CWSRF loan that a qualified institution uses to finance projects to (i) repair or replace failing on-site septic systems or (ii) replace failing on-site septic systems with connections to an available sewer.

- (10) “Construction” means erecting, installing, expanding or improving a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes demolishing an obsolete facility.
- (11) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.
- (12) “Default” means failing to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes filing bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.
- (13) “DEQ” means the Oregon Department of Environmental Quality.
- (14) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.
- (15) “Eligible recipient” means public agency with the meaning given in ORS 468.423.
- (16) “EPA” means the U.S. Environmental Protection Agency.
- (17) “Estuary management” means implementing actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.
- (18) “Failing on-site septic system” means an on-site septic system that discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters or that creates a public health hazard.
- (19) “Federal loans” are loans DEQ designates yearly in its Intended Use Plan that represent projects that are funded with monies directly made available by the federal capitalization grant for the associated federal fiscal year.
- (20) “Local community loan” means a loan, the proceeds of which a public agency uses to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.
- (21) “Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.
- (22) “Natural infrastructure” means using a natural form and ecosystem function to restore or augment a project’s intended water quality benefits.
- (23) “Nonpoint source” has the meaning given in ORS 468B.005.
- (24) “Nonpoint source control” means implementing a nonpoint source control activity under section 319 of the Clean Water Act and 40 C.F.R. § 35.3115(b) that is included in the ~~2014~~ Oregon Nonpoint Source Management Program Plan.

(25) “On-site septic system” means a subsurface on-site sewage treatment and disposal system, including, but not limited to, alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems as those terms are defined in ORS 454.605.

(26) “Operation” means controlling wastewater collection system pumping stations and wastewater facility treatment unit processes, controlling equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

(27) “Planning” means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for providing a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem, but does not include the preparation of detailed bid documents for construction.

(28) “Point source” has the meaning given in ORS 468B.005.

(29) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(30) “Project” means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

(31) “Project period” means the timeframe a project may be financed by a CWSRF loan.

(32) “Public agency” has the meaning given in ORS 468.423.

(33) “Public agency borrower” means a public agency that has signed a CWSRF loan agreement with DEQ.

(34) “Qualified institution” has the meaning given in ORS 468.423.

(35) “Ready to proceed” means, in regard to a project, that a loan applicant’s project details have been published in the Intended Use Plan under OAR 340-054-0025(3)–340-054-0025(5) and the applicant has met all loan requirements set out in OAR 340-054-0022.

(36) “Replacement” means obtaining and installing equipment, accessories or appurtenances necessary for operating a wastewater or stormwater facility, nonpoint source control or estuary management project in order to maintain a facility or project for the purpose for which it was designed and constructed during its useful life, but does not mean replacing a facility or project at the end of its useful life.

(37) “Small community” means a public agency serving a population of 10,000 or less.

(38) “Sponsorship option” means DEQ’s financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one combined CWSRF application.

(39) “Stormwater” means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

(40) “Sub-borrower” means a responsible party that signs a sub-loan.

(41) “Sub-loan” means a loan issued to a sub-borrower by a borrower using CWSRF loan proceeds.

(42) “Sustainability” means the long term reliability and viability of finance, operations, environmental performance or technology, or using natural infrastructure.

(43) “Treatment works” has the meaning given in ORS 468.423.

(44) “Wastewater” has the meaning given for “sewage” in ORS 468B.005.

(45) “Wastewater collection system” means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

(46) “Wastewater facility” means a wastewater collection system or wastewater treatment facility.

(47) “Wastewater treatment facility” means a publicly owned plant, device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(48) “Water quality standards” means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

[Note: The Intended Use Plan referenced is available from the agency. View a PDF of the Oregon Nonpoint Source Management Program by clicking on the "Tables" link below.]

[\[ED. NOTE: To view attachments referenced in rule text, click here to view rule.\]](#)

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

History:

[DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021](#)

[DEQ 8-2018, minor correction filed 02/14/2018, effective 02/14/2018](#)

[DEQ 37-2017, minor correction filed 12/14/2017, effective 12/14/2017](#)

[DEQ 18-2017, amend filed 11/06/2017, effective 11/07/2017](#)

DEQ 9-2015, f. & cert. ef. 10-16-15

DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14

DEQ 11-2012, f. & cert. ef. 12-14-12
DEQ 13-2010, f. & cert. ef. 10-27-10
DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10
DEQ 10-2003, f. & cert. ef. 5-27-03
DEQ 3-1995, f. & cert. ef. 1-23-95
DEQ 1-1993, f. & cert. ef. 1-22-93
DEQ 30-1990, f. & cert. ef. 8-1-90
DEQ 2-1989, f. & cert. ef. 3-10-89

340-054-0025

Clean Water State Revolving Fund Loans: Intended Use Plan (IUP) and Project Priority List

(1) IUP development. DEQ will annually develop and submit an IUP to EPA as described in the CWA § 606 and 40 C.F.R. § 35.3150. DEQ will update the IUP as specified in section (2) of this rule. The IUP will describe how DEQ proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.

(a) Except as specified in subsection (b) of this section, DEQ will update the annual IUP and project priority list at least every four months or when DEQ receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If DEQ does not receive an eligible application during a four-month period and determines the project priority list does not need to be updated, DEQ will not update the IUP.

(3) IUP public notice. DEQ will provide public notice and 14 days for the public to comment on a proposed draft IUP.

(a) DEQ will notify all new applicants of their project application ranking on the project priority list when DEQ develops and updates an annual IUP.

(b) An applicant may ask DEQ to reevaluate their project application's score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(c) DEQ will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. DEQ will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a DEQ-approved form.

(5) Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in ~~OCAR 340-054-0026 and 340-054-0027~~ the Intended Use Plan.

~~(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OCAR 340-054-0026 and 340-054-0027 on a point scale from one to five as follows:~~

~~(A) One point = No or very low likelihood.~~

~~(B) Two points = Low or in some minor way.~~

~~(C) Three points = Moderate to significant likelihood.~~

~~(D) Four points = High likelihood.~~

~~(E) Five points = Very high likelihood.~~

~~(b) DEQ will evaluate criteria 1(c), 1(d), 2(b), 2(c), 2(d), 2(e), and 3(d) in OCAR 340-054-0026 and criterion 5 in OCAR 340-054-0027 by doubling the point scale specified in subsection (a) of this section.~~

(6) Removal of application from the project priority list.

(a) DEQ may retain an applicant's ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

(b) After DEQ initially includes a ranked project on the project priority list, an applicant must submit to DEQ an annual written project status report to remain on the project priority list.

(c) DEQ may provide one twelve-month extension to an applicant asking to remain on the project priority list beyond the 36-month limit. An applicant asking for an extension must submit to DEQ a written project status report on the applicant's project progress and an updated time frame indicating when the applicant will complete all CWSRF financing requirements.

(d) DEQ will provide written notice to an applicant before removing the applicant's project from the project priority list.

(e) DEQ will remove a project from the project priority list if:

(A) An applicant does not submit an annual written project status report as subsection (b) of this section requires;

(B) An applicant does not ask for a twelve-month extension beyond the 36-month limit and submit the project status report as subsection (c) of this section requires;

(C) DEQ determines the project scope changed from the original ranked application;

(D) DEQ determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant asks to be removed from the project priority list.

(f) If DEQ removes a project from the project priority list as specified in paragraph (e)(A through C) of this section, an applicant may resubmit to DEQ a loan application for an eligible project that DEQ will evaluate under section (5) of this rule.

[Note: Publications referred to are not included here. The Project Priority List is contained within the CWSRF Intended Use Plan. That document is available from the agency.]

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

History:

DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021

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DEQ 9-2015, f. & cert. ef. 10-16-15

DEQ 11-2012, f. & cert. ef. 12-14-12

DEQ 13-2010, f. & cert. ef. 10-27-10

DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10

DEQ 7-2009, f. & cert. ef. 10-28-09

DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09

DEQ 10-2003, f. & cert. ef. 5-27-03

DEQ 3-1995, f. & cert. ef. 1-23-95

DEQ 1-1993, f. & cert. ef. 1-22-93

DEQ 30-1990, f. & cert. ef. 8-1-90

DEQ 2-1989, f. & cert. ef. 3-10-89

340-054-0026

**Clean Water State Revolving Fund Loans: CWSRF Project Ranking Criteria for ~~Non-~~
~~planning~~ Loans**

(1) Category 1. Water quality standards and public health considerations.

~~(a) Does the project improve water quality by addressing water quality parameters including, but not limited to: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?~~

~~(b) Does the project ensure that a facility currently in compliance, but at risk of noncompliance, remains in compliance?~~

~~(c) Does the project address noncompliance with water quality standards, public health issues or effluent limits related to surface waters, biosolids, water reuse or groundwater?~~

~~(d) If the project is not implemented, is a water quality standard likely to be exceeded or an existing exceedance likely to worsen?~~

(2) Category 2. Watershed and health benefits.

~~(a) Does the project improve or sustain aquatic habitat supporting native species or state or federally threatened or endangered species?~~

~~(b) Does the project address a water quality or public health issue within a federally designated wild and scenic river or sole source aquifer, state designated scenic waterway, the Lower Columbia River or Tillamook Bay estuary, a river designated under OAR 340-041-0350, or a significant wetland and riparian area identified and listed by a local government?~~

~~(c) Does the project support implementation of a total maximum daily load (TMDL) allocation, a department water quality status and action plan or designated groundwater management area declared under ORS 468B.180?~~

~~(d) Does the project provide performance based water quality improvements supported by monitoring and reasonable assurance that the project will continue to function over time?~~

~~(e) Does the project integrate or expand sustainability or using natural infrastructure, or use approaches including, but not limited to, water quality trading, that are not specified in subsections (f) through (i) of this section of the rule?~~

~~(f) Does the project incorporate or expand green infrastructure including, but not limited to, practices that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring, harvesting or using stormwater on a local or regional scale?~~

~~(g) Does the project incorporate or expand water efficiency including, but not limited to, using improved technologies and practices to deliver equal or better services with less water, such as conservation, reuse efforts or water loss reduction and prevention?~~

~~(h) Does the project incorporate or expand energy efficiency including, but not limited to, using improved technologies and practices to reduce energy consumption of water quality projects, use energy in a more efficient way or to produce or utilize renewable energy?~~

~~(i) Does the project incorporate or expand environmentally innovative projects including, but not limited to, demonstrating new or innovative approaches to deliver services or manage water resources in a more sustainable way?~~

(3) Category 3. Other considerations.

~~(a) Does the project include a long term planning effort that addresses financial, managerial or technical capability, or asset planning that ensures the project will be maintained?~~

~~(b) Does the project include a significant on going educational or outreach component?~~

~~(c) Does the project incorporate other resources including, but not limited to, in-kind support, other funding sources or a partnership with a governmental, tribal or non-governmental organization?~~

~~(d) Does the project address a small community's water quality improvement or restoration need?~~

~~(e) Does the project include a sponsorship option?~~

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 - 468.440

History:

DEQ 18-2017, amend filed 11/06/2017, effective 11/07/2017

DEQ 9-2015, f. & cert. ef. 10-16-15

DEQ 11-2012, f. & cert. ef. 12-14-12

~~**340-054-0027**~~

~~**Clean Water State Revolving Fund Loans to Public Agency Borrowers: CWSRF Project Ranking Criteria for Planning Loans**~~

~~Will the scope of the planning effort:~~

~~(1) Include more than one water quality benefit, pollutant or restoration effort?~~

~~(2) Include sustainability?~~

~~(3) Take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?~~

~~(4) Include financial, managerial or technical capability aspects of the project?~~

~~(5) Include integrating natural infrastructure and built systems?~~

~~(6) Demonstrate applicant cost effectiveness by considering three or more project alternatives such as optimizing an existing facility, regional partnership or consolidation?~~

~~**Statutory/Other Authority:** ORS 468.020 & 468.440~~

~~**Statutes/Other Implemented:** ORS 468.423 - 468.440~~

~~**History:**~~

~~DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021~~

~~DEQ 9-2015, f. & cert. ef. 10-16-15~~

~~DEQ 11-2012, f. & cert. ef. 12-14-12~~

340-054-0065

Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

(1) Loan types. A CWSRF loan to a public agency borrower must be one of the following:

(a) A loan secured by a general obligation bond, as defined in ORS 287A.001(10).

(b) A loan secured by the public agency borrower's pledge of its full faith and credit and taxing power, as described in ORS 287A.315.

(c) A loan agreement, bond or other unconditional obligation that meets the requirements specified in section (2) of this rule.

(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) A CWSRF loan to a public agency borrower that is a revenue secured loan must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the public agency borrower to DEQ. The obligation to pay must include a pledge of security DEQ accepts.

(b) Include a rate provision that requires the public agency borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operating, maintaining and replacing a project;

(B) All debt service;

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations; and

(D) An amount equal to the loan's coverage requirements. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage the public agency borrower selects from subsection (d) of this section of the rule.

(c) Include a debt service reserve provision requiring the public agency borrower to maintain a pledged reserve dedicated to the CWSRF loan payment and that meets the following requirements:

(A) The debt service reserve must be maintained in an amount at least equal to the product of the reserve percentage listed in subsection (d) of this section of the rule times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (d) of this section of the rule must correspond to the coverage factor selected for the CWSRF loan.

(B) A loan reserve may be funded with the public agency borrower's cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to DEQ. If DEQ determines reserve funding imposes an undue hardship on the public agency borrower, DEQ may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following coverage factors (net income to debt service) and reserve percentages (percentage of one-half the average annual debt service):

(A) 1.05:1-100 percent.

(B) 1.15:1-75 percent.

(C) 1.25:1-50 percent.

(D) 1.35:1-25 percent.

(e) Include a requirement for the public agency borrower to conduct a periodic rate review and rate adjustment, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that, if revenues fail to achieve the required rate level, the public agency borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. DEQ may determine that not adjusting rates does not constitute a default if the public agency borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that generates the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the public agency borrower's financial condition.

(i) Prohibit the public agency borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the public agency borrower is in violation of a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. DEQ may authorize an alternative loan to a public agency borrower for a reasonable alternative financing method if the public agency borrower demonstrates to DEQ's satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (a), (b), (c), or (d) of section (1) of this rule, is unduly burdensome or costly to the public agency borrower; and

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the public agency borrower. DEQ may consult with a financial advisor and may charge the public agency borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates for public agency borrowers.

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(b) Base rate. DEQ will determine the base rate used in computing the interest rates on all direct loans for a quarter based on the weekly average of state and local government bond interest rates for the preceding quarter. This base rate will be the “state and local bonds” entry reported in “Selected Interest Rates, H.15” posted by the Federal Reserve from the “Bond Buyer Index” for general obligation bonds (20 years to maturity, mixed quality).

(c) Planning loans. The interest rate for a planning loan will be equal to 25 percent of the base rate.

(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) Federal loans. DEQ will determine the interest rate for federal loans. DEQ will not set a rate that exceeds the highest rate described in Table 2 of this rule.

(f) All other direct loans. Except as provided in OAR 340-054-0065(10), DEQ will provide the following interest rates for all other CWSRF loans:

(A) For loans with a maximum repayment period of up to 20 years, DEQ will provide the following interest rates as detailed in Table 1 of this rule.

(B) (Effective January 1, 2016) For loans with a maximum repayment period of up to 30 years, DEQ will provide the following interest rates as detailed in Table 2 of this rule.

(C) DEQ will set interest rate premiums as described in Tables 1 and 2 in this rule so as to safeguard the fund’s perpetuity and DEQ will reevaluate them from time to time.

(g) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, DEQ:

(A) Will calculate the debt service on the wastewater facility project based on subsection (f) of this section of the rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in paragraph (g)(A) of this section of the rule only upon completion of both the sponsorship and its associated point source project; and

(C) May not reduce the resulting interest rate below one percent.

(h) Bond proceeds for direct loans. DEQ may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. Any change in the source of repayment for matching bonds will not affect this subsection’s requirements.

(5) Interest accrual and payment period for public agency borrowers. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a public agency borrower. A public agency borrower must include all outstanding accrued interest with each loan repayment.

(6) Annual loan fee for public agency borrowers.

(a) Except as provided in subsection (b) of this section of the rule, a public agency borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a public agency borrower is required to make under its loan agreement.

(b) DEQ will not charge a public agency borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment for public agency borrowers. A public agency borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose for which it was planned, designed, and built or DEQ determines that the project is completed.

(8) Loan term for public agency borrowers.

(a) A public agency borrower must fully repay a loan under a repayment schedule DEQ determines. DEQ will consider the useful life of the assets financed when determining the repayment schedule. The repayment term for:

(A) A planning loan may not exceed five years;

(B) A local community loan may not exceed ten years;

(C) All other loans may not exceed 20 years after project completion; and

(D) Effective January 1, 2016, loan terms may not exceed 30 years after project completion.

(b) DEQ will allow prepayments without penalty on all CWSRF loans except as section (11) of this rule specifies. Public agency borrowers must provide a written prepayment notification at least 30 days before the estimated pay off date.

(c) A loan must be fully amortized by the maturity date of the loan.

(9) Minor variations in loan terms for public agency borrowers. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Restructure and refinance of CWSRF loans for public agency borrowers.

(a) DEQ may consider a one-time loan restructure, such as combining two or more existing CWSRF loans, if such restructure safeguards the CWSRF's perpetuity. DEQ has the

discretion as to whether or not to offer a restructure in any individual case. DEQ also has the discretion to set all terms of any restructure.

(A) The existing CWSRF loans must have at least 10 years term remaining except where a Planning loan is combined with a Construction loan.

(B) A Sponsorship loan may not be combined with any other loan except its sponsoring point source project and only after the construction period for the nonpoint source control project has closed.

(b) DEQ may consider a one-time refinance of an existing CWSRF loan if such refinance safeguards the CWSRF's perpetuity and fund utilization rate. DEQ has the discretion as to whether or not to offer refinancing in any individual case. DEQ also has the discretion to set all terms of any refinance.

(A) The existing CWSRF loan must have at least 10 years term remaining.

(B) Any extension of term must not exceed the project's useful life.

(C) The refinance may not reduce the interest rate below one percent.

(D) A refinance may only be for rate, term, or rate and term and may not include any funding disbursed to the public agency borrower.

(c) DEQ may not charge a fee for a restructure or refinance.

(11) Leveraged loans for public agency borrowers.

(a) DEQ may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

(A) Interest rates will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 percent of the base rate.

(B) Loan fees will be calculated in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, DEQ may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

(b) Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

(12) Principal forgiveness for public agency borrowers. DEQ may provide additional subsidization to public agency borrowers in the form of principal forgiveness to the maximum extent the federal capitalization grant allows and as the criteria established in this section require. A loan with principal forgiveness is subject to standard interest rates, fees, and loan terms as defined in this rule. Whenever DEQ receives a federal capitalization grant

in addition to the annual base capitalization grant, DEQ may provide additional subsidization to eligible borrowers in the form of principal forgiveness to the maximum extent that the additional capitalization grant allows, and subject to its terms and the criteria established in this section.

(a) Eligibility. Except as specified in subsection (b) of this section of the rule, the following public agency borrowers are eligible for principal forgiveness:

(A) Public agency borrowers that are an eligible recipient and meet affordability criteria as specified in subsection (c) of this section of the rule;

(B) Public agency borrowers that are an eligible recipient with a project that DEQ determines implements a process, material, technique, or technology to address water-efficiency goals, energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction; or

(C) Public agency borrowers that are an eligible recipient and that do not meet the requirements of paragraph (a)(A) or (a)(B) in this section of the rule but have individual ratepayers who will experience financial hardship from a rate increase that financing a project causes. Applicants qualifying under this section must have an established ratepayer hardship assistance program. DEQ will review the applicant's ratepayer hardship assistance program for duration and effectiveness.

(b) Ineligible loans. The following types of loans are not eligible for principal forgiveness:

(A) Loans for projects that are not ready to proceed;

(B) Loans that have loan agreements that include incentives such as sponsorship option loans;

(C) Interim loans; ~~and~~

~~(D) Planning loans, except for planning loans for projects described in subsection (a)(B) of this section of the rule.~~

(c) Affordability Criteria. Affordability criteria shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area.

~~DEQ will use the following criteria to determine affordability, with the most weight added to paragraph (c)(A) of this section of the rule:~~

~~(A) Distressed as calculated by the Oregon Business Development Department's Oregon Distressed Index using the methodology described in OAR 123-024-0031; and~~

~~(B) Negative population trends as calculated by the annual United States' Census Bureau's American Community Survey.~~

(d) Principal forgiveness allocation amount. DEQ may allocate or adjust the allocation of additional subsidization every federal fiscal year as a percentage of the annual federal capitalization grant, not to exceed the maximum the federal allocation regulation permits. DEQ will determine the maximum allowable annual percentage allocation of subsidization from time to time to safeguard the ~~CWSRF's~~ loan fund's perpetuity.

(e) Alternate subsidy. DEQ may offer an alternate subsidy in lieu of principal forgiveness, such as a reduced interest rate, to eligible recipients that meet all other principal forgiveness criteria. DEQ will include any alternate subsidy awarded in the total additional subsidization allocated in any fiscal year and may not exceed the individual award amount in subsection (f) of this rule.

(f) Award Amount.

(A) Eligible public agency borrowers that are an eligible recipient may receive additional subsidization for their loan in an amount not to exceed the maximum amount determined by DEQ up to fifty percent of their loan but not to exceed \$500,000.

(B) For public agency borrowers that are an eligible recipient and that qualify for principal forgiveness under paragraph 12(a)(B), DEQ will limit the additional subsidization to 50 percent of the project components qualifying under paragraph 12(a)(B), not to exceed 50 percent of the loan amount or \$500,000, whichever is less.

(C) Public agency borrowers that are an eligible recipient may only receive one additional subsidization award per project.

(g) Award Reserves.

(A) DEQ will reserve seventy percent of the additional subsidization allocation for public agency borrowers that are an eligible recipient meeting the affordability criteria in subsection (a)(A) of this section of the rule.

(B) DEQ will reserve thirty percent of the additional subsidization allocation for public agency borrowers that are an eligible recipient with projects eligible under paragraph 12(a)(B) of this section of the rule.

(C) At the close of the federal fiscal year, DEQ may reallocate any unawarded allocation of additional subsidization in one reserve to the other reserve. If after such reallocation, unawarded allocation still remains, DEQ may reallocate unawarded additional subsidization to those public agency borrowers that are an eligible recipient and that are eligible under paragraph (a)(C) of this section of the rule.

(h) Loan Term. Public agency borrowers that are an eligible recipient and are eligible for principal forgiveness under the affordability criteria as specified in paragraph (a)(A) of this section of the rule must take the longest term available for their loan. All other applicants may choose any term permitted in section (8) of this rule. A public agency borrower may prepay its loan without penalty.

[\[ED. NOTE: To view attachments referenced in rule text, click here to view rule.\]](#)

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

History:

DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021

DEQ 18-2017, amend filed 11/06/2017, effective 11/07/2017

DEQ 9-2015, f. & cert. ef. 10-16-15

DEQ 11-2012, f. & cert. ef. 12-14-12

DEQ 13-2010, f. & cert. ef. 10-27-10

DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10

DEQ 10-2003, f. & cert. ef. 5-27-03

DEQ 3-1995, f. & cert. ef. 1-23-95

DEQ 1-1993, f. & cert. ef. 1-22-93

DEQ 30-1990, f. & cert. ef. 8-1-90

Reverted to DEQ 2-1989, f. & cert. ef. 3-10-89

DEQ 31-1989(Temp), f. & cert. ef. 12-14-89

DEQ 2-1989, f. & cert. ef. 3-10-89



State of Oregon Department of Environmental Quality

Draft Rules – Edits Incorporated

Chapter 340

Division 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

340-54-0010

Definitions

The following definitions apply to this rule division:

- (1) “Applicant” means a public agency or qualified institution that has applied for a CWSRF loan under this division.
- (2) “Available sewer” has the meaning given in ORS 454.779.
- (3) “Borrower” means a public agency or qualified institution that has signed a CWSRF loan agreement with DEQ.
- (4) “Change order” means a written order, and supporting information from a borrower, to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.
- (5) “Checklist of loan application requirements” means a list that DEQ provides of all documents an applicant must submit to DEQ to receive a loan offer under this division.
- (6) “Clean Water Act” or “CWA” means the federal Water Pollution Control Act, 33 U.S.C. § 1251 – § 1387.
- (7) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.
- (8) “Community development financial institution borrower” or “CDFI Borrower” means a qualified institution that has signed a CWSRF loan agreement with DEQ.
- (9) “Community development financial institution loan” or “CDFI loan” means a loan with proceeds made available from a CWSRF loan that a qualified institution uses to finance projects to (i) repair or replace failing on-site septic systems or (ii) replace failing on-site septic systems with connections to an available sewer.

- (10) “Construction” means erecting, installing, expanding or improving a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes demolishing an obsolete facility.
- (11) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.
- (12) “Default” means failing to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes filing bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.
- (13) “DEQ” means the Oregon Department of Environmental Quality.
- (14) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.
- (15) “Eligible recipient” means public agency with the meaning given in ORS 468.423.
- (16) “EPA” means the U.S. Environmental Protection Agency.
- (17) “Estuary management” means implementing actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.
- (18) “Failing on-site septic system” means an on-site septic system that discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters or that creates a public health hazard.
- (19) “Federal loans” are loans DEQ designates yearly in its Intended Use Plan that represent projects that are funded with monies directly made available by the federal capitalization grant for the associated federal fiscal year.
- (20) “Local community loan” means a loan, the proceeds of which a public agency uses to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.
- (21) “Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.
- (22) “Natural infrastructure” means using a natural form and ecosystem function to restore or augment a project’s intended water quality benefits.
- (23) “Nonpoint source” has the meaning given in ORS 468B.005.
- (24) “Nonpoint source control” means implementing a nonpoint source control activity under section 319 of the Clean Water Act and 40 C.F.R. § 35.3115(b) that is included in the Oregon Nonpoint Source Management Program Plan.

(25) “On-site septic system” means a subsurface on-site sewage treatment and disposal system, including, but not limited to, alternative sewage disposal systems, nonwater-carried sewage disposal facilities and subsurface sewage disposal systems as those terms are defined in ORS 454.605.

(26) “Operation” means controlling wastewater collection system pumping stations and wastewater facility treatment unit processes, controlling equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

(27) “Planning” means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for providing a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem, but does not include the preparation of detailed bid documents for construction.

(28) “Point source” has the meaning given in ORS 468B.005.

(29) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(30) “Project” means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

(31) “Project period” means the timeframe a project may be financed by a CWSRF loan.

(32) “Public agency” has the meaning given in ORS 468.423.

(33) “Public agency borrower” means a public agency that has signed a CWSRF loan agreement with DEQ.

(34) “Qualified institution” has the meaning given in ORS 468.423.

(35) “Ready to proceed” means, in regard to a project, that a loan applicant’s project details have been published in the Intended Use Plan under OAR 340-054-0025(3)–340-054-0025(5) and the applicant has met all loan requirements set out in OAR 340-054-0022.

(36) “Replacement” means obtaining and installing equipment, accessories or appurtenances necessary for operating a wastewater or stormwater facility, nonpoint source control or estuary management project in order to maintain a facility or project for the purpose for which it was designed and constructed during its useful life, but does not mean replacing a facility or project at the end of its useful life.

(37) “Small community” means a public agency serving a population of 10,000 or less.

(38) “Sponsorship option” means DEQ’s financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one combined CWSRF application.

(39) “Stormwater” means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

(40) “Sub-borrower” means a responsible party that signs a sub-loan.

(41) “Sub-loan” means a loan issued to a sub-borrower by a borrower using CWSRF loan proceeds.

(42) “Sustainability” means the long term reliability and viability of finance, operations, environmental performance or technology, or using natural infrastructure.

(43) “Treatment works” has the meaning given in ORS 468.423.

(44) “Wastewater” has the meaning given for “sewage” in ORS 468B.005.

(45) “Wastewater collection system” means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

(46) “Wastewater facility” means a wastewater collection system or wastewater treatment facility.

(47) “Wastewater treatment facility” means a publicly owned plant, device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(48) “Water quality standards” means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

[Note: The Intended Use Plan referenced is available from the agency. View a PDF of the Oregon Nonpoint Source Management Program by clicking on the "Tables" link below.]

[\[ED. NOTE: To view attachments referenced in rule text, click here to view rule.\]](#)

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

History:

[DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021](#)

[DEQ 8-2018, minor correction filed 02/14/2018, effective 02/14/2018](#)

[DEQ 37-2017, minor correction filed 12/14/2017, effective 12/14/2017](#)

[DEQ 18-2017, amend filed 11/06/2017, effective 11/07/2017](#)

DEQ 9-2015, f. & cert. ef. 10-16-15

DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14
DEQ 11-2012, f. & cert. ef. 12-14-12
DEQ 13-2010, f. & cert. ef. 10-27-10
DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10
DEQ 10-2003, f. & cert. ef. 5-27-03
DEQ 3-1995, f. & cert. ef. 1-23-95
DEQ 1-1993, f. & cert. ef. 1-22-93
DEQ 30-1990, f. & cert. ef. 8-1-90
DEQ 2-1989, f. & cert. ef. 3-10-89

340-054-0025

Clean Water State Revolving Fund Loans: Intended Use Plan (IUP) and Project Priority List

(1) IUP development. DEQ will annually develop and submit an IUP to EPA as described in the CWA § 606 and 40 C.F.R. § 35.3150. DEQ will update the IUP as specified in section (2) of this rule. The IUP will describe how DEQ proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.

(a) Except as specified in subsection (b) of this section, DEQ will update the annual IUP and project priority list at least every four months or when DEQ receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If DEQ does not receive an eligible application during a four-month period and determines the project priority list does not need to be updated, DEQ will not update the IUP.

(3) IUP public notice. DEQ will provide public notice and 14 days for the public to comment on a proposed draft IUP.

(a) DEQ will notify all new applicants of their project application ranking on the project priority list when DEQ develops and updates an annual IUP.

(b) An applicant may ask DEQ to reevaluate their project application's score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(c) DEQ will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. DEQ will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a DEQ-approved form.

(5) Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in the Intended Use Plan.

(6) Removal of application from the project priority list.

(a) DEQ may retain an applicant's ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

(b) After DEQ initially includes a ranked project on the project priority list, an applicant must submit to DEQ an annual written project status report to remain on the project priority list.

(c) DEQ may provide one twelve-month extension to an applicant asking to remain on the project priority list beyond the 36-month limit. An applicant asking for an extension must submit to DEQ a written project status report on the applicant's project progress and an updated time frame indicating when the applicant will complete all CWSRF financing requirements.

(d) DEQ will provide written notice to an applicant before removing the applicant's project from the project priority list.

(e) DEQ will remove a project from the project priority list if:

(A) An applicant does not submit an annual written project status report as subsection (b) of this section requires;

(B) An applicant does not ask for a twelve-month extension beyond the 36-month limit and submit the project status report as subsection (c) of this section requires;

(C) DEQ determines the project scope changed from the original ranked application;

(D) DEQ determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant asks to be removed from the project priority list.

(f) If DEQ removes a project from the project priority list as specified in paragraph (e)(A through C) of this section, an applicant may resubmit to DEQ a loan application for an eligible project that DEQ will evaluate under section (5) of this rule.

[Note: Publications referred to are not included here. The Project Priority List is contained within the CWSRF Intended Use Plan. That document is available from the agency.]

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

History:

DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021
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DEQ 9-2015, f. & cert. ef. 10-16-15
DEQ 11-2012, f. & cert. ef. 12-14-12
DEQ 13-2010, f. & cert. ef. 10-27-10
DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10
DEQ 7-2009, f. & cert. ef. 10-28-09
DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09
DEQ 10-2003, f. & cert. ef. 5-27-03
DEQ 3-1995, f. & cert. ef. 1-23-95
DEQ 1-1993, f. & cert. ef. 1-22-93
DEQ 30-1990, f. & cert. ef. 8-1-90
DEQ 2-1989, f. & cert. ef. 3-10-89

340-054-0026

Clean Water State Revolving Fund Loans: CWSRF Project Ranking Criteria for Loans

- (1) Category 1. Water quality standards and public health considerations.
- (2) Category 2. Watershed and health benefits.
- (3) Category 3. Other considerations.

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 - 468.440

History:

DEQ 18-2017, amend filed 11/06/2017, effective 11/07/2017
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340-054-0065

Clean Water State Revolving Fund Loans to Public Agency Borrowers: Loan Types, Terms and Interest Rates

- (1) Loan types. A CWSRF loan to a public agency borrower must be one of the following:
 - (a) A loan secured by a general obligation bond, as defined in ORS 287A.001(10).
 - (b) A loan secured by the public agency borrower's pledge of its full faith and credit and taxing power, as described in ORS 287A.315.
 - (c) A loan agreement, bond or other unconditional obligation that meets the requirements specified in section (2) of this rule.

(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) A CWSRF loan to a public agency borrower that is a revenue secured loan must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the public agency borrower to DEQ. The obligation to pay must include a pledge of security DEQ accepts.

(b) Include a rate provision that requires the public agency borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operating, maintaining and replacing a project;

(B) All debt service;

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations; and

(D) An amount equal to the loan's coverage requirements. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage the public agency borrower selects from subsection (d) of this section of the rule.

(c) Include a debt service reserve provision requiring the public agency borrower to maintain a pledged reserve dedicated to the CWSRF loan payment and that meets the following requirements:

(A) The debt service reserve must be maintained in an amount at least equal to the product of the reserve percentage listed in subsection (d) of this section of the rule times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (d) of this section of the rule must correspond to the coverage factor selected for the CWSRF loan.

(B) A loan reserve may be funded with the public agency borrower's cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to DEQ. If DEQ determines reserve funding imposes an undue hardship on the public agency borrower, DEQ may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following coverage factors (net income to debt service) and reserve percentages (percentage of one-half the average annual debt service):

(A) 1.05:1-100 percent.

(B) 1.15:1-75 percent.

(C) 1.25:1-50 percent.

(D) 1.35:1-25 percent.

(e) Include a requirement for the public agency borrower to conduct a periodic rate review and rate adjustment, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that, if revenues fail to achieve the required rate level, the public agency borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. DEQ may determine that not adjusting rates does not constitute a default if the public agency borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that generates the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the public agency borrower's financial condition.

(i) Prohibit the public agency borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the public agency borrower is in violation of a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. DEQ may authorize an alternative loan to a public agency borrower for a reasonable alternative financing method if the public agency borrower demonstrates to DEQ's satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (a), (b), (c), or (d) of section (1) of this rule, is unduly burdensome or costly to the public agency borrower; and

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the public agency borrower. DEQ may consult with a financial advisor and may charge the public agency borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates for public agency borrowers.

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(b) Base rate. DEQ will determine the base rate used in computing the interest rates on all direct loans for a quarter based on the weekly average of state and local government bond interest rates for the preceding quarter. This base rate will be the "state and local bonds" entry reported in "Selected Interest Rates, H.15" posted by the Federal Reserve from the "Bond Buyer Index" for general obligation bonds (20 years to maturity, mixed quality).

(c) Planning loans. The interest rate for a planning loan will be equal to 25 percent of the base rate.

(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) Federal loans. DEQ will determine the interest rate for federal loans. DEQ will not set a rate that exceeds the highest rate described in Table 2 of this rule.

(f) All other direct loans. Except as provided in OAR 340-054-0065(10), DEQ will provide the following interest rates for all other CWSRF loans:

(A) For loans with a maximum repayment period of up to 20 years, DEQ will provide the following interest rates as detailed in Table 1 of this rule.

(B) (Effective January 1, 2016) For loans with a maximum repayment period of up to 30 years, DEQ will provide the following interest rates as detailed in Table 2 of this rule.

(C) DEQ will set interest rate premiums as described in Tables 1 and 2 in this rule so as to safeguard the fund's perpetuity and DEQ will reevaluate them from time to time.

(g) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, DEQ:

(A) Will calculate the debt service on the wastewater facility project based on subsection (f) of this section of the rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in paragraph (g)(A) of this section of the rule only upon completion of both the sponsorship and its associated point source project; and

(C) May not reduce the resulting interest rate below one percent.

(h) Bond proceeds for direct loans. DEQ may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. Any change in the source of repayment for matching bonds will not affect this subsection's requirements.

(5) Interest accrual and payment period for public agency borrowers. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a public agency borrower. A public agency borrower must include all outstanding accrued interest with each loan repayment.

(6) Annual loan fee for public agency borrowers.

(a) Except as provided in subsection (b) of this section of the rule, a public agency borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a public agency borrower is required to make under its loan agreement.

(b) DEQ will not charge a public agency borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment for public agency borrowers. A public agency borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose for which it was planned, designed, and built or DEQ determines that the project is completed.

(8) Loan term for public agency borrowers.

(a) A public agency borrower must fully repay a loan under a repayment schedule DEQ determines. DEQ will consider the useful life of the assets financed when determining the repayment schedule. The repayment term for:

(A) A planning loan may not exceed five years;

(B) A local community loan may not exceed ten years;

(C) All other loans may not exceed 20 years after project completion; and

(D) Effective January 1, 2016, loan terms may not exceed 30 years after project completion.

(b) DEQ will allow prepayments without penalty on all CWSRF loans except as section (11) of this rule specifies. Public agency borrowers must provide a written prepayment notification at least 30 days before the estimated pay off date.

(c) A loan must be fully amortized by the maturity date of the loan.

(9) Minor variations in loan terms for public agency borrowers. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Restructure and refinance of CWSRF loans for public agency borrowers.

(a) DEQ may consider a one-time loan restructure, such as combining two or more existing CWSRF loans, if such restructure safeguards the CWSRF's perpetuity. DEQ has the discretion as to whether or not to offer a restructure in any individual case. DEQ also has the discretion to set all terms of any restructure.

(A) The existing CWSRF loans must have at least 10 years term remaining except where a Planning loan is combined with a Construction loan.

(B) A Sponsorship loan may not be combined with any other loan except its sponsoring point source project and only after the construction period for the nonpoint source control project has closed.

(b) DEQ may consider a one-time refinance of an existing CWSRF loan if such refinance safeguards the CWSRF's perpetuity and fund utilization rate. DEQ has the discretion as to whether or not to offer refinancing in any individual case. DEQ also has the discretion to set all terms of any refinance.

(A) The existing CWSRF loan must have at least 10 years term remaining.

(B) Any extension of term must not exceed the project's useful life.

(C) The refinance may not reduce the interest rate below one percent.

(D) A refinance may only be for rate, term, or rate and term and may not include any funding disbursed to the public agency borrower.

(c) DEQ may not charge a fee for a restructure or refinance.

(11) Leveraged loans for public agency borrowers.

(a) DEQ may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

(A) Interest rates will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 percent of the base rate.

(B) Loan fees will be calculated in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, DEQ may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

(b) Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

(12) Principal forgiveness for public agency borrowers. DEQ may provide additional subsidization to public agency borrowers in the form of principal forgiveness to the maximum extent the federal capitalization grant allows and as the criteria established in this section require. A loan with principal forgiveness is subject to standard interest rates, fees, and loan terms as defined in this rule. Whenever DEQ receives a federal capitalization grant in addition to the annual base capitalization grant, DEQ may provide additional subsidization to eligible borrowers in the form of principal forgiveness to the maximum extent that the additional capitalization grant allows, and subject to its terms and the criteria established in this section.

(a) Eligibility. Except as specified in subsection (b) of this section of the rule, the following public agency borrowers are eligible for principal forgiveness:

(A) Public agency borrowers that are an eligible recipient and meet affordability criteria as specified in subsection (c) of this section of the rule;

(B) Public agency borrowers that are an eligible recipient with a project that DEQ determines implements a process, material, technique, or technology to address water-efficiency goals, energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction; or

(C) Public agency borrowers that are an eligible recipient and that do not meet the requirements of paragraph (a)(A) or (a)(B) in this section of the rule but have individual ratepayers who will experience financial hardship from a rate increase that financing a project causes. Applicants qualifying under this section must have an established ratepayer hardship assistance program. DEQ will review the applicant's ratepayer hardship assistance program for duration and effectiveness.

(b) Ineligible loans. The following types of loans are not eligible for principal forgiveness:

(A) Loans for projects that are not ready to proceed;

(B) Loans that have loan agreements that include incentives such as sponsorship option loans;

(C) Interim loans

(c) Affordability Criteria. Affordability criteria shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area.

(d) Principal forgiveness allocation amount. DEQ may allocate or adjust the allocation of additional subsidization every federal fiscal year as a percentage of the annual federal capitalization grant, not to exceed the maximum the federal allocation regulation permits. DEQ will determine the maximum allowable annual percentage allocation of subsidization from time to time to safeguard the loan fund's perpetuity.

(e) Alternate subsidy. DEQ may offer an alternate subsidy in lieu of principal forgiveness, such as a reduced interest rate, to eligible recipients that meet all other principal forgiveness criteria. DEQ will include any alternate subsidy awarded in the total additional subsidization allocated in any fiscal year and may not exceed the individual award amount in subsection (f) of this rule.

(f) Award Amount.

(A) Eligible public agency borrowers that are an eligible recipient may receive additional subsidization for their loan in an amount not to exceed the maximum amount determined by DEQ.

(B) For public agency borrowers that are an eligible recipient and that qualify for principal forgiveness under paragraph 12(a)(B), DEQ will limit the additional subsidization to 50 percent of the project components qualifying under paragraph 12(a)(B).

(C) Public agency borrowers that are an eligible recipient may only receive one additional subsidization award per project.

(g) Award Reserves.

(A) DEQ will reserve seventy percent of the additional subsidization allocation for public agency borrowers that are an eligible recipient meeting the affordability criteria in subsection (a)(A) of this section of the rule.

(B) DEQ will reserve thirty percent of the additional subsidization allocation for public agency borrowers that are an eligible recipient with projects eligible under paragraph 12(a)(B) of this section of the rule.

(C) At the close of the federal fiscal year, DEQ may reallocate any unawarded allocation of additional subsidization in one reserve to the other reserve. If after such reallocation, unawarded allocation still remains, DEQ may reallocate unawarded additional subsidization to those public agency borrowers that are an eligible recipient and that are eligible under paragraph (a)(C) of this section of the rule.

(h) Loan Term. Public agency borrowers that are an eligible recipient and are eligible for principal forgiveness under the affordability criteria as specified in paragraph (a)(A) of this section of the rule must take the longest term available for their loan. All other applicants may choose any term permitted in section (8) of this rule. A public agency borrower may prepay its loan without penalty.

[\[ED. NOTE: To view attachments referenced in rule text, click here to view rule.\]](#)

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

History:

DEQ 12-2021, amend filed 07/26/2021, effective 07/26/2021

DEQ 18-2017, amend filed 11/06/2017, effective 11/07/2017

DEQ 9-2015, f. & cert. ef. 10-16-15

DEQ 11-2012, f. & cert. ef. 12-14-12

DEQ 13-2010, f. & cert. ef. 10-27-10

DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10

DEQ 10-2003, f. & cert. ef. 5-27-03

DEQ 3-1995, f. & cert. ef. 1-23-95

DEQ 1-1993, f. & cert. ef. 1-22-93

DEQ 30-1990, f. & cert. ef. 8-1-90
Reverted to DEQ 2-1989, f. & cert. ef. 3-10-89
DEQ 31-1989(Temp), f. & cert. ef. 12-14-89
DEQ 2-1989, f. & cert. ef. 3-10-89