State of Oregon Department of Environmental Quality

Clean Water State Revolving Fund Rulemaking
Advisory Committee Meeting 3

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Clean Water State Revolving Fund

Rulemaking Advisory Committee Agenda

Meeting #3

Wednesday, Aug. 5, 1 - 4 p.m. and Thursday, Aug. 6, 9 a.m. - 12 p.m.

Webinar and Call-in:

Join Microsoft Teams Meeting
+1 971-319-4991
Conference ID: 268 405 339#
Instructions: How to join online meetings

State of Oregon
Department of Environmental Quality

CWSRF
700 NE Multnomah St.,
Suite 600
Portland, OR 97232
Phone: 503-229-5622
Contact: Lee Ann Lawrence

www.oregon.gov/DEQ

DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

Day 1: Wednesday, Aug. 5

Time	Topic
1:00 p.m.	Welcome and logistics
1:15 p.m.	Recap and follow up from Advisory Committee Meeting #2 • Review meeting summary and status of action items
1:30 p.m.	Review rulemaking process, schedule and next steps
1:40 p.m.	Meeting #3 goals: Review and provide input on DEQ's proposed: • Below-market interest rates, loan terms and principal forgiveness for CDFIs and CDFIs' sub borrowers • Limits on how much DEQ will lend annually to CDFIs and borrowing limitations to any one CDFI • Project period for loan repayment • Conditions to restructure a loan for a CDFI • Risk management and creditworthiness measures • Draft Fiscal Impact Statement
1:50 p.m.	Presentation and Discussion: • Lending to Community Development Financial Institutions – Part 3 Guiding questions: o Do the proposed requirements adequately safeguard the loan fund's perpetuity? o Do the proposed requirements ensure affordability for CDFIs as well as sub borrowers? o What are other considerations DEQ should consider?

2:30 p.m.	**15 min. Break**
2:45 p.m.	Presentation and Discussion (cont.): Lending to Community Development Financial Institutions– Part 3
3:45 p.m.	Wrap-up and summary of next steps
4:00 p.m.	**Adjourn Meeting**

Day 2: Thursday, Aug. 6

Time	Topic
9:00 a.m.	Welcome and logistics
9:10 a.m.	Review Meeting #3 goals
9:15 a.m.	Presentation and Discussion (cont.): • Are there additional insights or questions about yesterday's presentation? Lending to Community Development Financial Institutions– Part 3

10:00 a.m.	Review and Discuss:
	• Draft Fiscal Impact Statement
	  o Will the proposed CDFI lending requirements have a fiscal impact?
	  o To what extent will that impact be?
	  o Will the proposed CDFI lending requirements have a significant adverse impact on small businesses?
	  o What can DEQ do to reduce any adverse impact on small businesses?

10:30 a.m.	**15 min. Break**
10:45 a.m.	Review and Discuss (cont.): Draft Fiscal Impact Statement
11:15 a.m.	Public Comment period. Public is allotted three minutes per person. Meeting continues if no or few comments.
11:45 a.m.	Wrap-up and Summary of next steps
12:00 p.m.	**Adjourn Meeting**

Alternative formats

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.

Advisory committee meeting #3

Clean Water State Revolving Fund

August 5, 2020

Welcome!
Sorry we can’t provide refreshments for meeting 3

Meeting Logistics

Microsoft Teams and web meeting functions

- Demonstration of basic Teams functions
- If you have technical challenges, a DEQ staff will reach out to you individually to troubleshoot
- Use the “raise hand” button during the presentations to ask for ***clarification***
- Presenters will pause after each topic for discussion and to answer questions about ***content***
- Chat will be monitored so that content questions can be discussed during pauses
- Use the chat function to let the facilitator and group know:
  - When you cannot hear or there is a technical challenge
  - When you would like to speak or ask a question
  - You want to indicate agreement with other speakers
  - That you would like the speaker to clarify something
  - You need a break/need to step away

Meeting Logistics

Meeting protocols:

- Stay focused and engaged in the meeting, the DEQ's director of DEQ selected you because your input is valued!
- Participants will be muted when not speaking
- The facilitator will call on each participant and will use the discussion circle diagram to ensure each participant has a chance to speak
- Review discussion circle diagram…this will help each participant know when they will have a chance to speak

Meeting overview

Follow up from Advisory Committee Meeting #2

- Review meeting summary and status of action items
- Review legislative intent

Meeting #3 goals:

- Review and provide input on DEQ's proposed below-market interest rates, loan terms and principal forgiveness for CDFIs and CDFIs' sub borrowers
- Review and provide input on DEQ's proposed limits on how much DEQ will lend annually to CDFIs and borrowing limitations to any one CDFI
- Review and provide input on DEQ's proposed project period for loan repayment
- Review and provide input on DEQ's proposed conditions to restructure a loan for a CDFI
- Review and provide input on DEQ's proposed risk management and creditworthiness measures

Rulemaking overview

This rulemaking process

- Spring/summer 2020: Advisory committee provides input in developing parameters for lending to CDFIs that will inform new and amended rules
- Summer 2020: PFM financial consultants hired to provide additional input into how the new rules can best meet the legislative intent, conform to programmatic standards and mitigate risk
- October 2020: Post draft rules for public comment, update proposals as needed
- November 2020: Public hearing
- March 2021: Present final proposed rules for adoption to the Environmental Quality Commission

Legislative intent

This rulemaking is to update the Clean Water State Revolving Fund program's administrative rules, OAR chapter 340, division 054. DEQ is acting in response to Senate Bill 884 (2019). The bill addresses nonpoint source pollution caused by privately owned failing septic systems, a leading cause of water quality contamination across the state.

- The bill expands the definition of eligible CWSRF borrowers. The expansion adds nonprofit Community Development Financial Institutions, certified by the US Department of Treasury, for the specific purpose of lending to individual homeowners for:
  - Septic repair
  - Septic replacement
  - Connection to a public sewer system

Meetings review

- During the first and second rulemaking advisory committee meetings, DEQ shared known requirements and considerations for further analysis
- Since the last rulemaking advisory committee meeting, DEQ evaluated input from the committee, the public, Oregon Department of Justice and PFM, a contracted third party financial consultant
- For this third and final advisory committee meeting, DEQ proposes the requirements that will be incorporated into OAR chapter 340, division 054 for final consideration by the rulemaking advisory committee

Discussion questions

For each proposed requirement, DEQ would like the rulemaking advisory committee to consider the following questions:

- Do the proposed requirements adequately safeguard the loan fund's perpetuity?
- Do the proposed requirements ensure affordability for CDFIs as well as sub borrowers?
- What are other considerations DEQ should consider?

Proposed pass-through lending requirements

Eligible nonprofit CDFI borrower

- DEQ will accept loan applications from qualified institutions that are nonprofits as defined in Oregon Revised Statutes 468.423 but not-for-profits are excluded

Loan terms and useful life

- DEQ proposes to offer a maximum loan term of 20 years because the average useful life of a septic system is 20 years

Interest rate calculation and additional subsidization

- DEQ proposes to define market interest rate for DEQ loans issued to CDFIs using the prime rate index as the metric

Discussion: nonprofit status and terms

QUESTION: Does the committee have questions or concerns about nonprofit status and terms?

Interest rate calculation and additional subsidization

DEQ proposes to define market rate for DEQ loans issued to CDFIs using the prime rate index as the metric.

- Lend to CDFIs at 50 percent the prime rate to keep with the “below-market rate” program practice and the Clean Water Act requirement to offer “at or below-market rate”
- Offer 50 percent of the loan in principal forgiveness or $500,000, whichever is less, as EPA allows in each annual capitalization grant
- Require all CDFIs to offer a “below-market” rate not to exceed 2 percent more than the DEQ rate for sub loans associated with CWSRF funding
- Restrict the asset of investment earnings, or program income, fees and principal repayments on the sub loans, to ensure the profit, fees and principal revolve back into the CDFI’s septic system lending program and are not diverted to other CDFI grant making or lending programs

Discussion: interest rates and additional subsidization

QUESTION: Does the committee have questions or concerns about the proposed interest rate and subsidy?

Affordability: Comparing three funding scenarios

DEQ, with input from PFM, determined that CDFIs can offer a “DEQ rate plus 2 percent” that will ensure affordability for both CDFIs and sub borrowers.

This was determined by comparing the following scenarios based on these assumptions:

- A $1,000,000 DEQ loan per CDFI per year
- 3.25 percent prime rate (current at the time this was written)
- 15 year term
- 37 sub loans at $27,000 each

Scenario comparison

Scenario	1	2	3
Description	50% PF DEQ rate = 50% prime CDFI rate = 2% over DEQ rate	50% PF DEQ Rate = 50% prime CDFI rate = not to exceed prime	Zero PF DEQ rate = 50% prime CDFI rate = not to exceed prime
Cost of DEQ loan over term	599,581	599,581	1,182,923
P&I proceeds from sub loan portfolio	1,296,568	1,263,539	1,263,539
Net proceeds after allowing for 3% loss	1,257,671	1,225,633	1,225,633
Total proceeds on sub loan portfolio	658,090	626,052	42,710
Annual proceeds from sub loan portfolio to service sub loans	43,873	41,737	2,847
Average monthly loan payment for sub borrowers	195	190	190

Discussion: interest rate scenarios

QUESTION: Does the committee have questions or concerns about the proposed scenarios and affordability?

DEQ's annual CDFI lending limits

Annually, DEQ sets limits on loan and subsidization amounts based on funds available, which safeguards the fund's perpetuity. This ensures that the fund is accessible and affordable to all eligible borrowers and will continue to be accessible for decades to come.

Proposed limits on CDFI borrowers

- EPA guidelines recommend that any program change be limited to a net effect of 10 percent or less to binding commitments over time
- DEQ determined that a maximum lending limit of $1M per loan per CDFI each year should be set to mitigate potential loan loss
- (Worst case scenario) An annual loss rate's effect on binding commitments over 10 and 20 years would create a 10 percent change in the fund with an annual loss of $1M, and a 24 percent change with an annual loss $2.5M in loans receivable, which is $5M in signed loans with 50 percent principal forgiveness

Estimated annual loss rate

10 Year Projections - based in millions of dollars		Annual Loss Model		
SFY	Base model – current program	$1M loss	$2.5M loss	$5M loss
2020	533	492	437	351
2021	555	506	440	338
2022	593	537	461	344
2023	634	571	486	356
2024	673	603	509	368
2025	706	630	529	378
2026	730	648	541	383
2027	741	656	545	382
2028	738	651	538	374
2029	718	632	520	359
2030	679	596	489	335
	7,299	6,523	5,496	3,966
		776	1,803	3,332
	Percent of change	10.63%	24.70%	45.66%

Discussion: lending limits

QUESTION: Does the committee have questions or concerns about the proposed loan limit?

15 minute break

Loan repayment/project completion

- DEQ will set the project period for each new CDFI loan at 12 months
- When the 12 month disbursement period concludes, DEQ will close the loan and start the repayment period for the amount of the loan proceeds disbursed within the project period
- All loan repayment schedules for both the DEQ loans and CDFI sub loans must be amortized with equal payments over the loan term
- DEQ will consider a loan restructure only if the CDFI presents an economic hardship impeding loan repayment in the same way DEQ would consider this for any CWSRF borrower. However, DEQ will not consider refinancing a CDFI loan for rate and/or term.
- DEQ will consider consolidating several CDFI's loans if there is a sound financial reason to do so

Discussion: Loan repayment/project completion

QUESTION: Does the committee have questions or concerns about the loan repayment/project completion proposals?

Risk management and creditworthiness

After consultation with the financial advisor, PFM, the following measures are being considered:

- **Security position:** DEQ's loan must be superior to other septic loan program debt
- **Loan security:** DEQ will consider a suite of loan security options such as:
  - Net assets pledge whether unrestricted, or restricted but available for such use
  - Security interest in sub loan portfolio
  - Security interest in a deposit account such as the loan loss reserve
  - Other asset pledge acceptable to the department
- **Asset to Liability Ratio**: Not to exceed .50
- **Debt service coverage ratio:** 1.25
- **Loan loss reserve:** CDFIs must maintain a loan loss reserve appropriate to the borrower profile and the total sub loan portfolio.
- **Debt service reserve:** The lesser of 10% of the loan principal balance or one year's payments.

Discussion: Risk management and creditworthiness

QUESTION: Does the committee have questions or concerns about the risk management and credit worthiness proposals?

Non-applicable CWSRF federal requirements

A CDFI as an eligible borrower and eligible onsite septic system projects will *not* be subject to the following federal requirements:

- Davis – Bacon wage requirements
- Disadvantaged Business Enterprise bidding requirements
- Environmental review or compliance with environmental cross-cutters
- Cost and Effectiveness Certification
- Fiscal Sustainability Plans

Wrap-up and summary of next steps

Adjourn Meeting

Advisory committee meeting #3

Clean Water State Revolving Fund

August 6, 2020

Welcome back

Meeting overview

Meeting #3 goals:

- Review and provide input on DEQ's proposed below-market interest rates, loan terms and principal forgiveness for CDFIs and CDFIs' sub borrowers
- Review and provide input on DEQ's proposed limits on how much DEQ will lend annually to CDFIs and borrowing limitations to any one CDFI
- Review and provide input on DEQ's proposed project period for loan repayment
- Review and provide input on DEQ's proposed conditions to restructure a loan for a CDFI
- Review and provide input on DEQ's proposed risk management and creditworthiness measures

Continued discussion

Remaining Questions & Answers:

Lending to Community Development Financial Institutions – Part 3

Fiscal Impact Statement

- A statement of fiscal impact: Identifying state agencies, units of local government, small and large businesses and the public
  - That adopting, amending or repealing the rule may economically affect
  - An estimate of that economic impact on state agencies, units of local government and the public
- A projection of any significant economic impact on businesses
- A cost of compliance for affected small businesses

Draft Fiscal Impact Statement

If the committee finds the rule will have a significant adverse impact on small businesses, DEQ will need recommendations on:

- Establishing differing compliance or reporting requirements or time tables for small business
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business
- Utilizing objective criteria for standards
- Exempting small businesses from any or all requirements of the rule
- Otherwise establishing less intrusive or less costly alternatives applicable to small business

Review and discuss

- Will the proposed CDFI lending requirements have a fiscal impact?
- If yes, what is the extent of that impact?
- Will the rule will have a significant adverse impact on small businesses?
- What can DEQ do to reduce any adverse impact on small businesses?

Public comment period

The public is allotted three minutes per person. Meeting continues if no or few comments.

Wrap-up and summary of next steps

Adjourn Meeting

State of Oregon Department of Environmental Quality

Clean Water State Revolving Fund 2020 Rulemaking

Lending to Community Development Financial Institutions – Part 3

Contact: Lee Ann Lawrence
503-229-5622

Background

There are more than 456,000 septic systems in Oregon. 30 percent of Oregon households rely on septic systems. As many as 10 percent of these systems fail each year according to various estimates. Septic system failures cause groundwater and surface water pollution that can endanger the environment and public health. Not all homeowners or small businesses have the financial resources to make repairs that can cost as much as $25,000.

Community Development Financial Institutions, known as CDFIs, can provide financing to address a failing septic system when the owners cannot access the necessary financing within the traditional banking system. In 2019, the Oregon legislature adopted Senate Bill 884 to help CDFI's address septic system financing challenges. The bill requires DEQ to establish pass-through lending procedures and requirements for CDFIs that will lend to septic system owners for repairing and replacing failing on-site septic systems or connecting to an available sewer system.

DEQ will implement this new law by adopting a new rule in OAR chapter 340, division 054 and by amending existing rules. DEQ's Clean Water State Revolving Fund is the implementing program for the new rule and rule amendments. This document describes the new loan requirements for pass-through lending to CDFIs.

Rulemaking Advisory Committee meeting #3 purpose

During the first and second rulemaking advisory committee meetings, DEQ shared known requirements and considerations for further analysis. Since the last rulemaking advisory committee meeting, DEQ has evaluated input from the committee, the public, the Oregon Department of Justice, and a contracted third party financial consultant, PFM.

For this third and final advisory committee meeting, DEQ now proposes the requirements that will be incorporated into its rules for the advisory committee's consideration.

Proposed pass-through lending requirements

The following proposals incorporate input and considerations from the rulemaking advisory committee, PFM, other states' CWSRF programs, and EPA and DEQ subject matter experts. The proposals reflect federal rules and the current CWSRF requirements that apply to CDFI lending.

Eligible nonprofit CDFI borrower

DEQ will accept loan applications from qualified institutions that are nonprofits as defined in Oregon Revised Statutes 468.423. Not-for-profits are excluded.

Rationale:

The legislative intent with the term "nonprofit" as a qualifier in the definition was to preclude a "for profit" CDFI from accessing public funds. This created a narrow definition that also excludes "not-for-profits" that can distribute investment earnings to members.

Senate Bill 884 amended Oregon Revised Statutes 468.423 and 468.425 to include the following language:

- 468.423(5) "**Qualified institution**" means a nonprofit organization registered to operate in the State of Oregon that is certified as a community development financial institution by the Community Development Financial Institution Fund at the United States Department of the Treasury."

Loan terms and useful life

DEQ proposes to offer a maximum loan term of 20 years because the average useful life of a septic system is 20 years. Concurrently, DEQ expects the DEQ loan and the CDFI's sub loans to have the same term length. Even though DEQ will not be lending directly to a CDFI's sub borrowers, the program is prevented from lending beyond a project's useful life. Therefore no DEQ loan or CDFI sub loan will exceed a 20 year term.

Rationale:

- Federal requirements prohibit the DEQ and CDFI loan terms from exceeding useful life (33 U.S.C. § 1383 (2020)).
- The term length of the sub loans should match the DEQ pass-through loan.
- All loan payments from CDFI sub loans should be directed back to the DEQ loan, including regularly scheduled payments, large principal payments or a full payoff. This ensures the state funds will continue to revolve and can be lent again.
- The funds DEQ loans to a CDFI's sub borrower will come back to DEQ eventually although the value of the sub loan portfolio may not be sufficient to secure or collateralize the DEQ loan.

Interest rate calculation and additional subsidization

DEQ proposes to define market rate for DEQ loans issued to CDFIs using the prime rate index as the metric. To ensure the best affordability to both CDFIs and the CDFI's sub borrowers, DEQ will:

- Lend to CDFIs at 50 percent the prime rate to keep with the "below-market rate" program practice and the Clean Water Act requirement to offer "at or below-market rate."
- Offer 50 percent of the loan in principal forgiveness or $500,000, whichever is less, as EPA allows in each annual capitalization grant.
- Require all CDFIs to offer a "below-market" rate not to exceed 2 percent more than the DEQ rate for sub loans associated with CWSRF funding.
- Restrict the asset of investment earnings, or program income, fees and principal repayments on the sub loans, to ensure the profit, fees, and principal revolve back into the CDFI's septic system lending program and are not diverted to other CDFI grant making or lending programs.

Rationale:

- The Oregon CWSRF is required to offer "below-market rate" loans to public agencies to protect public health at the most affordable rate, while still maintaining the fund's perpetuity.
- "At or below-market rate" loans CDFIs issue to sub borrowers to repair or replace a failing septic system or connect to an available sewer will protect public health and should be offered at an affordable rate that reflects the mission and purpose of the CWSRF.
- The Oregon CWSRF loan fund has been revolving for more than 30 years with money made available through federal capitalization grants and interest and loan repayments.
- Prime rate is the typical "best rate" banks offer for home mortgages and therefore is a reasonable metric for septic system assets.
- DEQ's restriction on interest rate mark-up for CDFI sub loans will ensure that loan affordability will be passed on to sub borrowers.
- Principal forgiveness offered to the CDFI is intended to keep the sub loan rates low, as demonstrated in the proposed scenario 1.

Affordability: Comparing three funding scenarios

DEQ, with input from PFM, determined that CDFIs can offer a "DEQ rate plus 2 percent" that will ensure affordability for both CDFIs and sub borrowers. This was determined by comparing the following scenarios based on these assumptions:

- A $1 million DEQ loan per CDFI per year
- 3.25 percent prime rate (current prime rate at the time this was written)
- 15 year term
- 37 sub loans at $27,000 each

Scenarios	1	2	3
	• 50% PF • DEQ rate = 50% prime • CDFI rate = 2% over DEQ rate	• 50% PF • DEQ Rate = 50% prime • CDFI rate = not to exceed prime	• Zero PF • DEQ rate = 50% prime • CDFI rate = not to exceed prime
CDFI's sub loans:			
Cost of DEQ loan over term	599,581	599,581	1,182,923
P&I proceeds from sub loan portfolio	1,296,568	1,263,539	1,263,539
Net proceeds after allowing for 3% loss	1,257,671	1,225,633	1,225,633
Total proceeds on sub loan portfolio	658,090	626,052	42,710
Annual proceeds from sub loan portfolio to service sub loans	43,873	41,737	2,847
Average monthly loan payment for sub borrowers	195	190	190

DEQ's annual CDFI lending limits

DEQ safeguards the fund's perpetuity by annually setting loan amount limits and subsidization amounts based on fund availability. This ensures that the fund is accessible and affordable to all eligible borrowers and will continue to be accessible for decades to come.

DEQ, with input from the rulemaking advisory committee and PFM, determined that a maximum lending limit should be set to mitigate potential loan loss. EPA guidelines recommend that any program change be limited to a net effect of 10 percent or less to binding commitments over time. Note that the modeled projections below represent a "worst case," such as if the program were to experience a complete default of the CDFIs portfolio each year. While this is an extreme example, it does help to visualize the net effect on the CWSRF program. If DEQ were to see these types of losses begin, the program would examine the trend and take appropriate action to protect the fund's perpetuity.

DEQ, with input from PFM, evaluated an annual loss rate's effect on binding commitments over 10 and 20 years as a stress test to see the percent of change. DEQ determined that the fund would experience a 10 percent change with an annual loss of $1M and 24 percent change with an annual loss $2.5M in loans receivable, which is $5M in signed loans with 50 percent principal forgiveness.

SFY	**Binding Commitments - 10 Year Projections** Based in millions of dollars	**Annual Loss Model**		
		$1M loss	$2.5M loss	$5M loss
2020	533	492	437	351
2021	555	506	440	338
2022	593	537	461	344
2023	634	571	486	356
2024	673	603	509	368
2025	706	630	529	378
2026	730	648	541	383
2027	741	656	545	382
2028	738	651	538	374
2029	718	632	520	359
2030	679	596	489	335
Total	7,299	6,523	5,496	3,966
Reduction in binding commitments		776	1,803	3,332
	Percent of change	10.63%	24.70%	45.66%

Currently, DEQ will set the maximum loan amount to any single CDFI to $1 million per year.

Loan repayment/project completion

- DEQ will set the project period for each new CDFI loan at 12 months.
- When the 12-month disbursement period concludes, DEQ will close the loan and start the repayment period for the amount of the loan proceeds disbursed within the project period.
- All loan repayment schedules for both the DEQ loans and CDFI sub loans must be amortized with equal payments over the loan term.

- DEQ will consider a loan restructure only if the CDFI presents an economic hardship impeding loan repayment in the same way DEQ would consider this for any CWSRF borrower. However, DEQ will not consider refinancing a CDFI loan for rate and/or term.
- DEQ will consider consolidating several CDFI's loans if there is a sound financial reason to do so.

Rationale:

- The Clean Water Act requires borrowers enter into repayment 12 months after the project's construction phase is complete. DEQ generally structures loans for an interest only payment at 6 months after project completion with principal and interest payments beginning 6 months later (or 12 months after project completion).
- Setting the project period to one year ensures that the projects funded by the sub loans will not exceed the six-month to one-year window.
- Typically DEQ will only refinance internal debt in order to maintain the interest and fee revenue of those loans in the program portfolio, which protects the fund's perpetuity. DEQ considers refinancing only when a borrower is already planning to refinance their DEQ loan with another debt instrument, such as a bond issuance.
- With initial plans to keep the CDFI debt load low, early repayments (prepayments) to the CWSRF loan fund do not represent a significant loss of revenue to the program. Any CDFI may repay its loan early with no prepayment penalty.

Risk management and creditworthiness

In the second rulemaking advisory committee meeting in February 2020, DEQ reviewed public and private lending comparisons and considerations to mitigate risk and to ensure a borrower's creditworthiness. After consultation with the financial advisor, PFM, DEQ is considering the following measures:

- **Security position:** DEQ's loan must be superior to other septic loan program debt
- **Loan security:** DEQ will consider a suite of loan security options such as:
    - Net assets pledge whether unrestricted or restricted but available for such use
    - Security interest in sub loan portfolio
    - Security interest in a deposit account such as the loan loss reserve
    - Other asset pledge acceptable to the department
- **Asset to Liability Ratio**: Not to exceed .50
- **Debt service coverage ratio:** 1.25
- **Loan loss reserve:** CDFIs must maintain a loan loss reserve appropriate to the borrower profile and the total sub loan portfolio.
- **Debt service reserve:** The lesser of 10 percent of the loan principal balance or one year's payments.

Non-applicable CWSRF federal requirements

A CDFI as an eligible borrower and eligible onsite septic system projects will not be subject to the following federal requirements:

- Davis-Bacon wage requirements
- Disadvantaged Business Enterprise bidding requirements
- Environmental review or compliance with environmental cross-cutters
- Cost and Effectiveness Certification
- Fiscal Sustainability Plans

Third-party financial advisor – progress to date and next steps

DEQ contracted with PFM for financial advice. PFM is working with CWSRF program staff to evaluate the requirements for CDFI lending and will help develop new loan underwriting guidelines related to perfecting a lien and assuring the ability to collect in the case of default. The Oregon Department of Justice will advise DEQ so that any new guidelines do not exceed program statutory authority. PFM will:

1. Review existing underwriting and collateral policy and procedure. Contractor will provide consulting services to verify and augment language for strength and reasonableness of proposed underwriting guidelines specific to lending to non-governmental entities generally, and CDFIs specifically.

2. Provide consulting services for proposed security/collateral to be included into underwriting guidelines and future loan agreements, including review of borrower and sub loan borrower creditworthiness as it relates to collateral sufficiency.

3. Determine appropriate methodology to assess strength of pledged revenue source and appropriate collateral.

4. Develop a cash flow model for CDFI borrower and sub loan borrowers, including modeling potential defaults and remedy. Contractor will train appropriate agency staff on cash flow model.

Housekeeping

DEQ is using this rulemaking to perform minor rule amendments known as "housekeeping" to correct dates, grammatical errors and clarify language. In addition, DEQ will make minor policy amendments that have little to no negative impact to the agency or to stakeholders. DEQ proposes one housekeeping item that will change program policy:

- Amend the Intended Use Plan's public comment period from 30 days to 14 days

Rationale:

- By reducing the timeframe, DEQ can expedite the loan application process, allowing applicants to proceed to a loan agreement more quickly.
- DEQ does not have a standard requirement for the length of the public comment period. 30 days is considered a best practice by many other State of Oregon programs. Oregon's Drinking Water Program offers shorter 10- or 14-day public comment periods.
- DEQ rarely receives a public comment on the Intended Use Plan.
- 14 days is a reasonable timeframe for a member of the public to comment on the plan.

Alternative formats

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.

State of Oregon Department of Environmental Quality

Draft Fiscal Impact Statement

CWSRF 2020 Rulemaking

Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

Fee analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Fiscal and economic impact

There could be many fiscal and economic impacts from the proposed rule changes to DEQ's Clean Water State Revolving Fund. Senate Bill 884 made nonprofit Community Development Financial Institutions a new type of eligible CWSRF borrower. The proposed rule changes have a direct fiscal impact on CDFIs by allowing them to use CWSRF below market-rate loans to finance sub loans to the general public for repairing and replacing failing onsite septic systems or connecting to an available sewer system.

The CWSRF program itself may experience negative fiscal impacts related to administrative costs and the loan fund's perpetuity. No other DEQ programs will be impacted.

There are direct economic benefits to the general public and indirect economic benefits to large and small business owners. CDFIs will lend CWSRF loan proceeds at below market-rates to sub borrowers, creating a positive fiscal impact on the general public by ensuring loan affordability for septic system projects that have a water quality benefit.

There are also indirect economic benefits to the general public and business owners located near a project funded by the CDFIs septic loan program. CDFIs and their sub borrowers will have access to affordable below-market rate loans that will assist with repairs and potentially generate business activity near the project locations, including hiring septic repair companies and purchasing equipment.

Statement of Cost of Compliance

State agencies

DEQ

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 fiscal impacts to the program and no impacts to other DEQ programs.

Direct impacts

- New eligible nonprofit CDFI borrower: There are additional administrative costs associated with setting up a CDFI lending program, developing new underwriting guidelines, developing new forms and accounting processes, and assessing the nature of this type of lending over the short and long term and its impacts on the fund's perpetuity.
- Housekeeping items: No known fiscal impact.

Indirect impacts

No known indirect impacts.

Local governments

Direct impacts

No known direct impacts.

Indirect impacts

Counties and land use planning departments may see an increase in permit applications related to repairing and replacing failing onsite septic systems or connecting to an available sewer system due to onsite septic system owners having an increased access to below-market rate loans for the project costs.

Public

The general public is not eligible to borrow CWSRF loan funds directly.

Direct impacts

While unable to borrow directly from the CWSRF loan program, members of the general public will directly benefit by having access to affordable loans from a CDFI as a result of the below-market rates and loan subsidy that the CDFI receives from the CWSRF loan.

Indirect impacts

General public members may be more likely to address septic repairs due to access to affordable loans which may result in more septic repairs, replacements or connections to an

available sewer system that will further provide economic benefits related to improved water quality. Contractors could see an increase in new contracts creating additional economic benefits for the public.

Large businesses - businesses with more than 50 employees

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

Direct impacts

No known direct impacts

Indirect impacts

There may be indirect beneficial economic impacts to businesses located in, or providing services in, the areas near a project funded by the CDFI's onsite septic system loan program, if the proposed changes allow the public agency to avoid rate increases.

Onsite septic system manufacturers, installers and construction-related businesses may benefit from an increase in contracts if they are hired to work on a project funded by the CDFI's onsite septic system loan program.

Small businesses – businesses with 50 or fewer employees

ORS 183.336 Cost of Compliance Effect on Small Businesses

The effect of the proposed rules on small businesses would be identical to the effect on large businesses, as described above.

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

None. Small businesses are not eligible to borrow the program's funds.

2. 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.

3. 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.

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

No small businesses participated in developing the proposed rules because the rules do not directly affect them.

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
Summary of Clean Water State Revolving Fund Advisory Committee Recommendations	Clean Water State Revolving Fund Rulemaking Website

Advisory committee fiscal review

(This section will be completed after committee completes its review)

DEQ appointed an advisory committee.

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
- 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 and
Choose one:
-documented its recommendations in the (enter title and date of document)
or
- its findings are stated in the approved minutes dated DATE.

The committee **Enter specifics about the committee's fiscal impact review**. The committee determined the proposed rules would/would not have a significant adverse impact on small businesses in Oregon.

Only if the fiscal impact statement or the advisory committee determined there would be a significant adverse impact on small business, include the following:

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business

- Utilizing objective criteria for standards
- Exempting small businesses from any or all requirements of the rule
- Otherwise establishing less intrusive or less costly alternatives applicable to small business

Explain the outcome of the above review.

Explain the outcome of DEQ's review of these questions.

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 CDFIs, and the cost of the CDFI's sub loans issued to septic system owners for repairing and replacing failing on-site septic systems or connecting to an available sewer system on existing developments.