



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

April 30, 2021

Clean Water State Revolving Fund 2020

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules – Edits Highlighted
- Draft Rules – Edits Included (final clean version)

Note for Readers:

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

- Click on the “Windows” item in the top ribbon
- Click on “New Window”
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- Click on “File” in the top ribbon
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Introduction

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

Request for Other Options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

Overview

In 2019, the Oregon legislature adopted [Senate Bill 884](#) that amended ORS 468.423 – 468.440 to allow nonprofit Community Development Financial Institutions, certified by the US Department of Treasury, to access Clean Water State Revolving Fund loans for the purpose of lending those loan funds to individuals for repairing or replacing a failing on-site septic system, or connecting to an available sewer.

Failing on-site septic systems cause groundwater and surface water pollution that can endanger the environment and public health. A CDFI can provide on-site septic system owners access to loans to make repairs that can cost as much as \$25,000 when other financial resources are inaccessible.

DEQ will implement this new law by amending existing rules and adopting a new rule in [OAR chapter 340, division 054](#) to establish procedures and requirements that will ensure CDFIs have the financial ability to lend at below-market rates and to repay a secured CWSRF loan, while DEQ safeguards the fund's perpetuity.

DEQ proposes the following changes to OAR 340, division 54:

- Amend CWSRF rules to include new definitions related to CDFI lending:
 - Available sewer
 - CDFI borrower
 - CDFI loan
 - Failing on-site septic system
 - On-site septic system
 - Project period
 - Public agency borrower
 - Qualified institution
 - Sub-borrower
 - Sub-loan

- Amend CWSRF rules to:
 - Clarify which CWSRF lending requirements apply to only public agency borrowers, only to CDFI borrowers, or apply to both.
 - Include CDFIs as a new eligible loan applicant and borrower for the specific purpose of financing the capital costs of CDFI sub-loans for repairing or replacing failing on-site septic systems, or for a sewer connection.
 - Reduce the Intended Use Plan’s public notice period from 30 days to 14 days.
 - Clarify that the value engineering requirement is applicable to wastewater treatment facilities.
 - Clarify state and federal procurement requirements for architectural and engineering services.

- Adopt a new rule, 340-054-0066, that articulates the loan conditions, terms and interest rates that apply to CDFI borrowers.

- Remove Single Audit Act language that was repealed on Jan. 1, 2014.

Procedural Summary

More information

Information about this rulemaking is on this rulemaking’s web page: [Clean Water State Revolving Fund Rulemaking](#)

Public Hearings

DEQ plans to hold one public hearing. Anyone can attend a hearing by webinar or teleconference.

Date: June 1, 2021

Start time: 10 a.m.

Location: Meeting to be held remotely.

[Join online via Zoom](#)

Join by phone:

Call-in number 888-475-4499 (toll-free in the U.S.)

Meeting ID: 833 4823 6284

Passcode: 225908

Instructions on how to join webinar or teleconference: [Instructions](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, by regular mail or at the public hearing.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on June 1, 2021.

Submit comment by email

Any person can submit comments by sending an email. Commenters should include “CWSRF 2020” in the email subject line. Submit emails to: CWSRF2020@deq.state.or.us

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

By mail

Oregon DEQ
Attn: Lynn Barlow
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearing

Tuesday, June 1, 2021

Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [CWSRF 2020 Rulemaking Email List](#);
- Signing up on the rulemaking web site: [CWSRF 2020 rulemaking web page](#)

Get email or text updates about other, future DEQ rulemaking by signing up through this link: [DEQ Email Notice List](#).

What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ's intended action is to present the proposed rule changes to the EQC as soon as possible after the earliest date on which the rule changes could take effect. DEQ intends to submit the proposed rule changes to the EQC on or after June 19, 2021.

Statement of need

CDFI lending	Discussion
New definitions and amended definitions	
What need would the proposed rule address?	The new and amended definitions articulate the meaning of public agency borrowers, CDFI borrowers, loan applicants, sub-loans and sub-borrowers, failing on-site septic systems, and project period that are included in the new rule and amended rules throughout OAR 340-054.
How would the proposed rule address the need?	The new definitions explain the meaning of terms included in the lending requirements and eligible project activities related specifically to CDFIs, public agencies or both.
How will DEQ know the rule addressed the need?	Public agency and CDFI borrowers will understand exactly what projects are eligible for a CWSRF loan and which lending requirements apply to each or both.
340-054-0066 Clean Water State Revolving Fund Loans to CDFI Borrowers: Loan Conditions and Agreements, Terms, and Interest Rates	
What need would the proposed rule address?	The proposed loan conditions, terms, and below-market interest rates ensure loan affordability for CDFIs and sub-borrowers, sustainable lending practices, compliance with OAR 340-071 and OAR 340-073, and mitigate financial risk to DEQ.
How would the proposed rule address the need?	The prime rate index, DEQ below-market rate, sub-loan interest rates, principal forgiveness, and project period are set to ensure affordability for the CDFI borrower and sub-borrowers. Compliance with OAR 340-071 and OAR 340-073 requirements will ensure the on-site septic system work aligns with existing regulatory requirements to protect the asset and water quality. DEQ's

CDFI lending	Discussion
	risk management and creditworthiness measures protect the perpetuity of the CWSRF loan program by ensuring the CDFI's ability to repay DEQ.
How will DEQ know the rule addressed the need?	CDFIs will be able to lend at below-market rates. Sub-borrowers will have access to below-market rate loans. On-site septic systems will meet compliance standards. DEQ will maintain the fund's perpetuity by ensuring the CDFI loan is secure.
340-054-0025(3) Intended Use Plan public notice	Discussion
What need would the proposed rule address?	By reducing the public notice period timeframe from 30 days to 14 days, DEQ can accept loan applications onto the Intended Use Plan more quickly while still allowing sufficient time for the public to comment on the plan.
How would the proposed rule address the need?	It will expedite the loan application process, allowing applicants to proceed to a loan agreement more quickly.
How will DEQ know the rule addressed the need?	Loan applicants will be able to start making progress on loan requirements earlier in the application process.

Rules affected, authorities, supporting documents

Lead division

Water Quality Division

Program or activity

Community Programs and Assistance, the Clean Water State Revolving Fund

Chapter 340 action

Adopt				
340-054-0066				
Amend				
340-054-005	340-054-0010	340-054-0015	340-054-0022	340-054-0025
340-054-0027	340-054-0036	340-054-0056	340-054-0060	340-054-0065
340-054-0071	340-054-0072			

Statutory Authority - ORS			
468.020	468.065	468.440	

Statutes Implemented - ORS	
468.423 – 468.440	

Legislation

Oregon Senate Bill 884

Documents relied on for rulemaking

Document title	Document location
Oregon Senate Bill 884	Oregon State Legislative Information
US Department of Treasury, Community Development Financial Institutions Fund	CDFI Fund website
CDFI Coalition	CDFI Coalition website
Opportunity Finance Network	Opportunity Finance website

Clean Water Loans DEQ Grant Report	DEQ Headquarters, 700 NE Multnomah, Suite 600, Portland, OR 97232
Idaho State Revolving Fund – Household Septic System Program	RCAC website
Wall Street Journal Market Data	Wall Street Journal website
Historical Prime Rate Records	JP Morgan Chase website
Bankrate	Bankrate – best interest rates website
Craft3’s Loan Program Brochure and Interest Rates	Craft3 website – brochure Craft3 website – interest rates
Craft3’s Audited Financial Statements 2019	Craft3 website – financial statements
GuideStar	GuideStar website
Aeris	Aeris website
DEQ loan loss models, interest/term/additional subsidization models, and CDFI repayment schedules	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 2020 Rulemaking Website
PFM financial consultation meeting summaries	DEQ Headquarters, 700 NE Multnomah, Suite 600, Portland, OR 97232

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.

- 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

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

a. 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.

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.

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 participated in developing the proposed rules because the rules do not directly affect them.

Documents relied on for fiscal and economic impact

The requirement to list the documents relied on to determine fiscal impact is separate from and in addition to the similar list in the Rules affected, authorities, supporting documents section above.

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

The requirement to discuss an advisory committee in this section is separate from, and in addition to, discussing the advisory committee in the Stakeholder Involvement section. The question to be addressed here is whether an advisory committee reviewed the fiscal impact statement.

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, 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. The committee's recommendations are documented in the advisory committee meeting summary dated Aug. 5-6, 2020 and April 21, 2021.

The committee did not find any adverse impacts on small businesses and noted that the proposed rules will create benefits that far outweigh any unforeseen adverse impacts. The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

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.

Federal relationship

Relationship to federal requirements

The Clean Water State Revolving Fund is a federal program established in the Clean Water Act Section VI - STATE WATER POLLUTION CONTROL REVOLVING FUNDS (33 U.S. Code §1383) and 40 CRF Part 35.31.

The proposed rules are not different from or in addition to federal requirements. CWA Section VI created the CWSRF program and authorizes states to establish practices and requirements that align with the federal laws governing the program, and to ensure the fund will revolve. The proposed rules explain and build on requirements that are listed in federal law.

Land use

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 state wide 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 all of the proposed rules affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. Any new projects funded under these proposed rules would have to comply with OAR 340-054-0022(5)(e), which requires the projects to meet land-use requirements in OAR 340-018-0050 relating to compatibility with acknowledged comprehensive plans before they receive CWSRF funding that may be accomplished through a Land Use Compatibility Statement.

EQC Prior Involvement

DEQ gave an informational presentation to the EQC on Jan. 21, 2021 about this proposed rule revision. Commissioners expressed support for the this new type of lending and a need for DEQ to ensure that the most economically distressed Oregonians are able to access this low-cost financing for septic repairs, replacement and connection to an available sewer.

Advisory Committee

Background

DEQ convened the Clean Water State Revolving Fund 2020 Rulemaking advisory committee. The committee met four times and included representatives from local governments, state and federal lending agencies, clean water advocacy groups and stakeholders affected by the proposed rules. The committee's web page is located at: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rcwsrf2020.aspx>

The committee members were:

Rulemaking Name Advisory Committee	
Name	Representing
April Snell	Oregon Water Resources Congress
Charlotte Bentley	USDA, Rural Development
Chris Thomas	The Freshwater Trust
Doug Waugh	Clackamas Water Environment Services, representing Oregon Association of Clean Water Agencies
Eann Raines	Clackamas Soil and Water Conservation District
Janna Graham	Business Oregon
Karen Lewotsky	Oregon Environmental Council
Desiree Sideroff	Craft3
Sarah Absher	Association of Oregon Counties
RosAnna Noval	Rural Community Assistance Corp.
Chris Bailey	League of Oregon Cities
Tom Elliott	Oregon Department of Energy

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
 - Clean Water State Revolving Fund
 - Clean Water State Revolving Fund Rulemaking
- 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 discussed the Senate Bill 884, the on-site septic system water quality issues in Oregon, and the proposed CDFI lending requirements related to interest rates, loan terms, creditworthiness and risk mitigation measures. The committee recommended that DEQ consider starting with lending limits the first few years to see how well lending to CDFIs will address the water quality issue while mitigating risk to the CWSRF's perpetuity.

The committee members provided a variety of input on the proposed CDFI lending requirements. One committee member commented that some low-income, on-site septic system owners could not afford any loan, no matter how subsidized and that the CWSRF loan program may not be the right match for funding to CDFIs. Some committee members thought that the issue should be brought back to the Legislature for reconsideration. Other committee members commented that the proposed interest rates and risk mitigations are not attractive to CDFIs while other committee members commented that the proposed CDFI lending requirements were generous and appeared to be a good deal for CDFI borrowers and sub-borrowers.

Public Engagement

Public notice

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

- On April 29, 2021 Filing notice with the Oregon Secretary of State for publication in the May 2021 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 2020](#);
- Emailing approximately 17,331 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notice
 - Clean Water State Revolving Fund
 - CWSRF Rulemaking
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senate Environment and Natural Resources Committee:
 - Chair, Senator Jeff Golden
 - Vice-Chair, Senator Alan Olsen
 - House Water Committee:
 - Chair, Rep. Ken Helm
 - Vice-Chair, Rep. Gary Leif
 - Vice-Chair, Rep. Jeff Reardon
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

How to comment on this rulemaking proposal

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By mail

Oregon DEQ
Attn: Lynn Barlow
700 NE Multnomah St., Room 600
Portland, OR 97232-4100

At hearing

Tuesday, June 1, 2021.

Public Hearing

DEQ plans to hold one public hearing. Anyone can attend a hearing by webinar or teleconference.

Date: June 1, 2021
Start time: 10 a.m.
Location: Meeting to be held remotely.
[Join online via Zoom](#)

Join by phone:
Call-in number 888-475-4499 (toll-free in the U.S.)
Meeting ID: 833 4823 6284
Passcode: 225908

Instructions on how to join webinar or teleconference: [Instructions](#)

DEQ will consider all comments and testimony received before the closing date. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Accessibility Information

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:

~~Deleted Text~~

New/inserted text

[Summary: The deleted text Division 54’s title is legacy language that no longer represents the projects eligible for CWSRF loan funding. The program isn’t limited to funding only wastewater treatment works projects and the program hasn’t been called the ‘construction grants program’ in nearly 30 years.]

Division 54

~~MUNICIPAL WASTE WATER TREATMENT WORKS CONSTRUCTION GRANTS PROGRAM~~—CLEAN WATER STATE REVOLVING FUND PROGRAM

[Summary: Subsection (2)(b) incorporates the new eligible CWSRF borrower “qualified institutions” for the purpose of lending to address failing on-site septic systems.]

340-054-0005

Purpose

(1) The rules in this division establish procedures and requirements for funding projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund.

(2) This division:

(a) Assists a public agency to obtain financing for a project that enhances, protects or restores water quality.

(b) Assists a qualified institution to obtain financing to finance projects to either (i) repair or replace failing on-site septic systems or (ii) replace failing on-site septic systems with connections to an available sewer.

(~~c~~b) Ensures the loan application and funding processes, procedures and requirements are clear.

(~~d~~e) Promotes loan affordability by offering below-market interest rates.

(ed) Ensures CWSRF’s perpetuity for project funding reliability to provide loans for future projects that enhance, protect or restore water quality.

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

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

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

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

[Summary: The new definitions incorporate the amended language in ORS 468.423 – 468.440 and lending terminology related to CDFI lending.]

340-054-0010

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 either (i) repair or replace failing on-site septic systems or (ii) replace failing on-site septic systems with connections to an available sewer under ORS 468.423.

(~~107~~) “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.

(~~118~~) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.

(~~129~~) “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.

(~~1310~~) “DEQ” means the Oregon Department of Environmental Quality.

(~~1411~~) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.

(~~1512~~) “Eligible recipient” means public agency with the meaning given in ORS 468.423.

(~~1613~~) “EPA” means the U.S. Environmental Protection Agency.

(~~1714~~) “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 is a failing system as that term is defined in OAR 340-071-0100(65).

(~~1915~~) “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.

(~~2016~~) “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.

(~~2117~~) “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.

(~~2218~~) “Natural infrastructure” means using a natural form and ecosystem function to restore or augment a project’s intended water quality benefits.

(~~2319~~) “Nonpoint source” has the meaning given in ORS 468B.005.

(~~2420~~) “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” has the meaning given in ORS 454.779(c).

(~~2624~~) “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.

(~~2722~~) “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.

(~~2823~~) “Point source” has the meaning given in ORS 468B.005.

(~~2924~~) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(~~3025~~) “Project” means the activities or tasks identified in a loan application or a loan agreement eligible under OAR 340-054-0015 for which a borrower may expend or obligate funds.

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

(~~3226~~) “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.

(~~3527~~) “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.

(~~3628~~) “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.

(~~3729~~) “Small community” means a public agency serving a population of 10,000 or less.

(~~3830~~) “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.

(~~3931~~) “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.

(~~4232~~) “Sustainability” means the long term reliability and viability of finance, operations, environmental performance or technology, or using natural infrastructure.

(~~4333~~) “Treatment works” has the meaning given in ORS 468.423.

(~~4434~~) “Wastewater” has the meaning given for “sewage” in ORS 468B.005.

(~~4535~~) “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.

(~~4636~~) “Wastewater facility” means a wastewater collection system or wastewater treatment facility.

(~~4737~~) “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.

(~~4838~~) “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 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

[Summary: Amendment (3)(a) and (3)(b) incorporates “qualified institutions” as the new eligible borrower for the specific activity of financing failing on-site septic repairs, replacements or connection to an available sewer.]

340-054-0015

Clean Water State Revolving Fund Loans: Eligible Projects and Activities

(1) A public agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

(a) Implementing a management program established under section 319 of the Clean Water Act.

(b) Developing and implementing a comprehensive conservation and management plan under section 320 of the Clean Water Act.

(c) Constructing, repairing, or replacing decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage.

(d) Managing, reducing, treating, or recapturing stormwater or subsurface drainage water.

(e) Developing and implementing watershed projects meeting the criteria set forth in section 122 of the Clean Water Act.

(f) Reusing or recycling wastewater, stormwater, or subsurface drainage water.

(2) A municipality or intermunicipal, interstate or State agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

- (a) Constructing publicly owned treatment works.
- (b) Acquiring the land that will be an integral part of the treatment process. These lands include land used for storing treated wastewater in land treatment systems prior to land application, or will be used for ultimate disposal of residues resulting from such treatment and acquiring other land, and interest in land, that are necessary for construction.
- (c) Reducing the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.
- (d) Reducing the energy consumption needs for publicly owned treatment works.
- (e) Increasing the security of publicly owned treatment works.

(3) A qualified institution may apply for a CWSRF loan to finance the capital costs of sub-loans to its sub-borrowers for:

(a) Repairing or replacing failing on-site septic systems, or

(b) For the replacement of failing on-site septic systems with connections to an available sewer.

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

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

[Summary: Amendments clarify when a loan application requirement applies to all applicants or specific types of applicants.]

340-054-0022

Clean Water State Revolving Fund Loans: Loan Application Requirements

(1) Application submittal. DEQ will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible ~~public agency~~[applicant](#) may submit a CWSRF loan application to DEQ at any time.

(2) Consideration for funding. DEQ will consider an applicant for funding only if its project is included in the Intended Use Plan and its application meets all of this division's requirements.

(3) All CWSRF loans. An applicant must submit the following to DEQ:

(a) A complete application on the applicable DEQ form;

(b) Documents specified in the DEQ checklist of [loan](#) application requirements;

(c) Audited financial statements for the three years preceding the application date and the applicant's current budget, unless waived in writing by DEQ;

(d) Evidence the applicant has the authority to undertake the project including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account;

(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed ~~wastewater or stormwater facility, nonpoint source control or estuary management~~ project. DEQ may require an applicant to meet the following criteria for a revenue-secured loan described under OAR 340-054-0065(2) [or OAR 340-054-0066\(2\)](#):

(A) An applicant's revenue stream is not at risk from undue dependence on a limited portion of the system's [or qualified institution's](#) customer base or a pattern of delinquent payment from that portion of the system's [or qualified institution's](#) customer base, and

(B) An applicant must have the ability to collect from delinquent customers;

(f) Pre-award compliance review report or other evidence DEQ requires showing compliance with federal nondiscrimination requirements;

(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, constructing and operating the proposed project. The documents must be satisfactory to DEQ for determining an adequate pledge of security;

(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by DEQ;

(i) Official statement of recently issued bonds if required by DEQ;

(j) A DEQ-approved certification that the requirements for the cost and effectiveness analysis and the subsequent project selection are completed as required by section 602(b)(13) of the CWA;

(k) Any other information DEQ requests as necessary to complete the loan application.

(4) Local community loan. In addition to the requirements in section (3) of this rule, ~~an~~ applicant public agency applying for a CWSRF local community loan must submit the following to DEQ:

(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.

(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to DEQ.

(c) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(d) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) DEQ-approved plans and specifications that comply with OAR chapter 340, division 52, unless waived by a DEQ engineer.

(g) An environmental determination obtained from DEQ for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from the scope the other agency accepted.

(B) The other agency's determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to DEQ:

(a) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(b) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from DEQ for a construction project of a treatment works as defined in ORS 468.423, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project, that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(d) If an applicant does not obtain an environmental determination, as specified in subsection (5)(c) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that the other agency accepted.

(B) The other agency's determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) For a construction-only loan, DEQ-approved plans and specifications for the project as OAR chapter 340, division 052 requires.

(g) If the estimated cost of a [wastewater treatment facility](#) project is in excess of \$10 million, a value engineering study satisfactory to DEQ done prior to beginning construction. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.

(6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a point source project must submit the following to DEQ:

(a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project to address the identified water quality problem. An applicant must have DEQ review and approve this document before signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system; and

(B) Introducing wastewater into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding selecting the most cost-effective alternative for the project.

(c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. DEQ will only consider a sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit an engineered planning report to DEQ. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

(8) Federal loans. In addition to the applicable requirements in sections (3)–(7) of this rule, a loan designated as a federal loan must meet the requirements for federally funded projects in the Clean Water Act Title VI and EPA’s January 6, 2015, memo “Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act.”

(9) CDFI loans. In addition to requirements in sections (3) and (5) of this rule, a qualified institution applying for a CWSRF loan must submit:

(a) Documentation demonstrating that all sub-loans will comply with applicable provisions of OAR chapter 340, division 71 and chapter 340, division 73.

(b) A description of how the project will implement OAR 340-054-0015(3).

(c) A projected cash flow statement based on anticipated number of sub-loans, sub-loan repayment schedule, amount and timing of sub-loan disbursements.

[Note: Publications referred to are not included here. The CWSRF Intended Use Plan is available from the agency. View a PDF of the EPA Interpretive Guidance 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 36-2017, minor correction filed 12/13/2017, effective 12/13/2017

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

[Summary: Amendment shortens the IUP's public notice period to expedite the loan application process.]

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 ~~30~~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 OAR 340-054-0026 and 340-054-0027.

(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OAR 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 OAR 340-054-0026 and criterion 5 in OAR 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 60-2018, minor correction filed 04/04/2018, effective 04/04/2018

DEQ 38-2017, 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 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

[Summary: Amendment to the rule title distinguishes that ranking criteria for planning loans in this rule only apply to public agency borrowers, not to CDFI Borrowers.]

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

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

[Summary: Amendment to the rule title distinguishes that reserves, CWSRF general fund and project funding in this rule only apply to public agency borrowers, not to CDFI Borrowers.]

340-054-0036

Clean Water State Revolving Fund Loans [to Public Agency Borrowers](#): Reserves, CWSRF General Fund and Project Funding

- (1) Allocation to reserves and CWSRF general fund. DEQ will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:
 - (a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve;
 - (b) A maximum of \$3 million to the planning reserve;

(c) An amount at least equal to the minimum required by the federal capitalization grant to the green project reserve;

(d) Amount of funds remaining, after allocation to the reserves as specified in subsections (a) through (c) of this section of the rule, to the CWSRF general fund.

(2) Project funding increase.

(a) DEQ will offer a funding increase to a [public agency](#) borrower for an existing project based on the original project priority list ranking before offering a loan to an applicant for a new project loan if:

(A) Funds are available in the CWSRF; and

(B) The [public agency](#) borrower submits a written request to DEQ for additional funding, has the legal authority to borrow the increased loan amount and has the financial capability to repay the increased loan amount.

(b) Any funding increase DEQ awards to a [public agency](#) borrower will be in an amount specified in section (3) of this rule and will be done by increasing the amount of the borrower's existing loan or by DEQ making an additional loan to the [public agency](#) borrower at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year DEQ will assign a project to an appropriate reserve, to the CWSRF general fund or to both.

(b) Based on availability of funds in the CWSRF at the time of allocation, DEQ will allocate an amount to a borrower in project priority list rank order that:

(A) Is not more than the greater of \$2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. DEQ may allocate additional funds if funds are available after allocating the maximum amount under paragraph (b)(A) of this section of the rule to each [public agency](#) borrower who requested project funding in a state fiscal year;

(B) Is not more than the greater of \$750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated;

(C) Is not more than \$250,000 of the planning reserve; and

(D) Only finances the portion of a project funded under the green project reserve that DEQ determines meets federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by EPA requirements.

(c) During a state fiscal year DEQ will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(d) DEQ will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.

(4) Reallocation of reserve funds.

(a) DEQ may reallocate funds between small community and planning reserves and the CWSRF general fund unless demand exceeds available funds.

(b) DEQ will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. DEQ will determine the total amount of CWSRF funds to be allocated at a reduced interest rate through the sponsorship option in each state fiscal year.

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

[Summary: Amendments clarify when a loan use condition applies to all applicants or a specific type of applicants.]

340-054-0056

Clean Water State Revolving Fund Loans: CWSRF Loan Use Conditions

(1) Clean Water Act plans. DEQ will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. DEQ will not provide a loan that will be used to refinance another lender's long-term loan or other debt obligations.

(3) Refinancing an interim loan. DEQ may provide a loan to refinance an interim loan or self-generated funds used to pay DEQ-approved project costs if the [public agency](#) borrower:

(a) Provides DEQ with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. DEQ may provide short-term, construction-period financing for an eligible project if the following conditions are met:

(a) The CWSRF's liquidity is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed for prior obligations;

(b) The [public agency](#) borrower has a legally enforceable obligation for long-term project financing satisfactory to DEQ; and

(c) The loan agreement for interim financing will stipulate DEQ is not obligated to provide long-term financing for the project.

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

[Summary: Amendments distinguish that the loan agreements and conditions in this rule only apply to public agency borrowers, not to CDFI Borrowers; and repeal expired language.]

340-054-0060

Clean Water State Revolving Fund Loans [to Public Agency Borrower](#): Loan Agreement and Conditions

DEQ will include conditions in a loan agreement that apply to the type of project being financed, including, but not limited to, the following:

(1) Timely use of loan funding.

(a) DEQ may cancel a loan agreement if a [public agency](#) borrower fails to begin using loan proceeds within two years after signing a loan agreement.

(b) [Public agency](#) borrowers that do not begin using loan proceeds within two years after signing a loan agreement will have a choice of canceling the loan and reapplying for DEQ funding or paying holding costs to DEQ.

(A) Holding costs are, on an annual basis, the estimated amount of the loan interest payable to DEQ, less the amount of the interest DEQ earned from the Treasurer's investment of funds for DEQ's account. DEQ will itemize holding costs on a semi-annual invoice DEQ

sends to the [public agency](#) borrower. The [public agency](#) borrower must pay these costs within 30 days after DEQ sends the invoice.

(B) A [public agency](#) borrower may apply for a one-time one year extension to begin using loan proceeds.

(2) Accounting. A [public agency](#) borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(3) Records retention. A [public agency](#) borrower must retain project files and records for six years after project performance affirmative certification or project completion as DEQ determines or such longer period as applicable state or federal law requires. A borrower must also retain financial files and records for three years after the loan is repaid in full.

(4) Wage requirements.

(a) A [public agency](#) borrower for constructing a treatment works project must comply with all provisions of the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144 and 3146, as detailed in section 513 of the Clean Water Act. Wage rates must be based on the wage requirements of the Davis Bacon Act or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A [public agency](#) borrower for a project not specified in subsection (a) of this section of the rule must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Construction materials. A [public agency](#) borrower for -a treatments works construction project must ensure that all of the iron and steel products used in the project are produced in the United States as required by section 608 of the Clean Water Act, [also known as the American Iron and Steel Provision](#).

(6) Debarment and suspension. A [public agency](#) borrower must comply with Subpart C of 2 C.F.R part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R part 1532, Responsibilities of Participants Regarding Transactions.

(7) Engineering documents. If a [public agency](#) borrower uses CWSRF financing to construct a wastewater facility subject to OAR 340-052, it must submit to DEQ plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation OAR [chapter 340, division-052](#) and [OAR 340-054-0022](#) require.

(8) Inspections and progress reports.

(a) A [public agency](#) borrower must have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections during the construction phase of a wastewater facility subject to OAR 340-052 to ensure the project complies with approved plans and specifications. DEQ or its representative may enter property the [public agency](#) borrower owns or controls to conduct interim inspections. DEQ may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) DEQ may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR [chapter 340, - division 052](#) support the project's successful implementation and completion. A [public agency](#) borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(9) Loan amendments.

(a) DEQ will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) DEQ will execute a loan amendment [to a public agency borrower](#) if:

(A) DEQ awards a [public agency](#) borrower an increase in the original approved loan amount at any time during the project;

(B) The [public agency](#) borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds; or

(C) DEQ determines a [public agency](#) borrower must meet additional federal or state requirements for CWSRF financing.

(10) Change orders. DEQ may approve or reject a change order based on the loan eligibility of the project modification and on engineering value under OAR 340-052-0015. A [public agency](#) borrower must submit a change order to DEQ for engineering and financial review:

(a) When any change order is executed, and

(b) Before executing any change order that exceeds \$100,000 or will alter project performance.

(11) Project performance certification for a wastewater facility. A [public agency](#) borrower must submit to DEQ, within a timeframe DEQ specifies, project performance documents to verify whether the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents

may include, but are not limited to, construction certification, performance evaluation report or performance certification.

(12) Eligible construction costs. DEQ will only disburse loan funds for construction costs for work that complies with plans, specifications, change orders and addenda DEQ reviewed or approved.

(13) Adjustments. DEQ may at any time review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction or other discrepancies.

(14) Contract and bid documents. A [public agency](#) borrower must submit a copy of the awarded contract and bid documents to DEQ, including a tabulation of all bids received.

(15) Architectural and engineering services. Contractors for program management, construction management, feasibility studies, preliminary engineering design, design, engineering, surveying, mapping, or architectural related services ~~for federal loans~~ must be selected as provided in ORS 279C.110 and OAR chapter 137, division 048; ~~or equivalent federal requirement for selection of architectural and engineering services.~~ [Federal loan recipients must also follow the federal requirements for selection of architectural and engineering services as provided in 40 U.S.C. Chapter 11. Federally recognized Indian tribal governments must follow the federal requirements for selection of architectural and engineering services as provided in 40 U.S.C. Chapter 11 or an equivalent tribal government requirement.](#)

(16) Audit.

(a) If DEQ requests it, a [public agency](#) borrower must submit audited financial statements to DEQ each year until the loan is repaid.

(b) ~~If a borrower expends \$500,000 or more in federal funds, from all sources, in its fiscal year beginning before December 26, 2014, the borrower must have a single organization-wide audit conducted under the Single Audit Act, as amended.~~ If a [public agency](#) borrower expends \$750,000 or more in federal funds, from all sources, in a fiscal year ~~beginning on or after December 26, 2014,~~ [the public agency](#) borrower must have a single organization-wide audit conducted under the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. The [public agency](#) borrower must submit copies of all audits to DEQ within 30 days of completion. If a [public agency](#) borrower expends less ~~than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less~~ than \$750,000 in a fiscal year ~~beginning on or after that date,~~ the [public agency](#) borrower is exempt from federal audit requirements for that year. Records must be available to DEQ, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives for the purpose of making audits, examinations and copies.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement's terms. Upon default by a [public agency](#) borrower, DEQ may proceed with one or more of the following:

(a) Pursuing any remedy available to it against the [public agency](#) borrower.

(b) Appointing a receiver at the [public agency](#) borrower's expense to operate the facility that generates the pledged revenues.

(c) Setting and collecting utility rates and charges pledged as security for the loan.

(d) Withholding any amounts otherwise due to the [public agency](#) borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If DEQ finds the loan to the [public agency](#) borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.

(e) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A [public agency](#) borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the [public agency](#) borrower.

(19) Effect of document approval or certification.

(a) DEQ's review and approval of facilities plans, design drawings and specifications, or any other documents does not relieve a [public agency](#) borrower of responsibility to properly plan, design, build and effectively operate and maintain a ~~wastewater or stormwater facility, nonpoint source control or estuary management~~ project as required by law, regulations, permits, and good management practices.

(b) DEQ may not be held responsible for:

(A) Any project costs or any losses or damages resulting from defects in plans, design drawings and specifications, or other sub-agreement documents; or

(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(20) Reservation of rights.

(a) A [public agency](#) borrower may require such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ’s right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a [public agency](#) borrower that fails to carry out its obligations under OAR chapter 340.

(21) Other provisions and documentation. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

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

DEQ 2-2008, f. & cert. ef. 2-27-08

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

[Summary: Amendments distinguish that loan types, terms and interest rates in this rule only apply to public agency borrowers, not to CDFI Borrowers.]

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 ~~wastewater or stormwater facility, nonpoint source control or estuary management~~ 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.

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; 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) ~~Additional subsidization~~ [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 ~~additional subsidization~~ [principal forgiveness](#) is subject to standard interest rates, fees, and loan terms as defined in this rule.

(a) Eligibility. Except as specified in subsection (b) of this section of the rule, the following ~~applicants~~ [public agency borrowers](#) are eligible for ~~additional subsidization~~ [principal forgiveness](#):

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

(B) ~~Applicants~~ 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) ~~Applicants~~ 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 ~~additional subsidization~~ 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. 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) ~~Additional subsidization~~ 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 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 ~~additional subsidization~~ 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 ~~applicants~~ public agency borrowers that are an eligible recipient may receive additional subsidization for up to fifty percent of their loan but not to exceed \$500,000.

(B) For ~~applicants~~ public agency borrowers that are an eligible recipient and that qualify for ~~additional subsidization~~ 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) ~~Applicants~~ 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 ~~applicants~~ 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 ~~applicants~~ 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. ~~Applicants~~ Public agency borrowers that are an eligible recipient and are eligible for ~~additional subsidization~~ 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 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

[Summary: The new rule closely follows the structure of 340-054-0065 and includes all loan conditions, terms and interest rates that apply to CDFI Borrowers.]

340-054-0066

Clean Water State Revolving Fund Loans to CDFI Borrowers: Loan Conditions and Agreements, Terms, and Interest Rates

(1) The CWSRF loan to a CDFI Borrower may only be used 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.

(2) A CWSRF loan to a CDFI Borrower must be secured by one or a combination of the following, as determined to be appropriate by DEQ, and incorporated in the loan agreement:

(a) The CDFI Borrower's pledge of available net assets,

(b) A security interest in the CWSRF sub-loan portfolio, including the revenues, income and proceeds of the portfolio;

(c) A security interest in a deposit account, or

(d) Other obligations acceptable to DEQ.

(3) A CWSRF loan agreement with a CDFI Borrower must be:

(a) Properly executed.

(b) Include a covenant that requires the CDFI Borrower to maintain minimum cash flow sufficient to pay:

(A) All expenses of operating and maintaining the sub-loan portfolio project;

(B) All debt service on the CWSRF loan;

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

(c) Include a provision requiring the CDFI Borrower to maintain a pledged debt service reserve accounts dedicated to the CWSRF that meets the following requirements:

(A) The debt service reserve must be maintained in an amount equal to the lesser of:

(i) 10 percent of the loan principal balance, or

(ii) one year's debt service payments.

(B) A debt service reserve may be funded with the CDFI Borrower's cash, a letter of credit, repayment guaranty or other third party commitment that is satisfactory to DEQ.

(d) Maintain a loan loss reserve account at a level appropriate to the CDFI Borrower risk profile and the sub-loan portfolio and that is acceptable to DEQ.

(e) Include a provision requiring the CDFI Borrower to maintain an Aeris Insight, Inc. rating score of A or better. If Aeris Insight, Inc. is no longer providing ratings, include a provision requiring a risk management and credit rating score determined to be sufficient solely at the discretion of DEQ.

(A) If the CDFI Borrower cannot maintain a risk management and credit rating score determined to be sufficient by DEQ, DEQ may require the CDFI Borrower to have a higher debt service coverage ratio, a higher debt service reserve, or may take a first priority security interest in the CDFI Borrower's sub-loan portfolio or any combination of these debt securities.

(f) Include a requirement for the CDFI Borrower to conduct an annual review to ensure revenues in subsequent years will be sufficient to service the loan.

(g) Include a requirement that if either the debt service reserve account or the loan loss reserve account is depleted below the required level for any reason, the CDFI Borrower must take prompt action to restore the reserve(s) to the required minimum amount.

(i) Prohibit the CDFI Borrower from selling, transferring, or encumbering any asset acquired or established with the proceeds of the CDFI loan without the express written consent of DEQ.

(4) A CWSRF loan to a CDFI Borrower will be active and available for loan disbursements for 12 months after the loan is fully executed.

(b) After the 12 month period has ended, no further disbursements will be allowed on the loan unless an extension is granted in writing by DEQ. If necessary, the final loan amount and corresponding terms in the loan agreement will be amended to reflect the total amount disbursed during the project period.

(c) A repayment schedule will be calculated to begin no later than 12 months after the project period concludes.

(5) Limits for CWSRF Loans to CDFI Borrowers. There is an annual loan amount limit of \$2 million for any single CDFI Borrower and any single loan. There is an annual limit in the amount of \$10 million in new CWSRF Loans to CDFI Borrowers in the aggregate.

(6) Interest rates for CWSRF loans to CDFI Borrowers.

(a) Base rate. DEQ will calculate the base rate based on the weekly average of prime interest rates for the preceding quarter.

(b) The interest rate for a CDFI loan will be equal to 50 percent of the base rate.

(c) Interest rates on a CDFI's sub-loans shall not exceed a rate that is equal to the interest rate under the CDFI loan plus two percent.

(7) Interest accrual and payment period for CWSRF loans to CDFI Borrowers. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a CDFI Borrower. A CDFI Borrower must include all outstanding accrued interest with each loan repayment.

(8) Annual loan fee for CWSRF Loans to CDFI Borrowers. A CDFI Borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the repayment schedule in its loan agreement. This annual loan fee is in addition to any other payments a CDFI Borrower is required to make under its loan agreement.

(9) Commencement of loan repayment for CWSRF Loans to CDFI Borrowers. A CDFI Borrower must begin its loan principal and interest repayments within one year of the date of a fully disbursed loan or when DEQ determines that the project period has ended.

(10) Loan term for CWSRF Loans to CDFI Borrowers.

(a) A CDFI 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 CWSRF loan to a CDFI Borrower may not exceed twenty years.

(b) DEQ will allow prepayments without penalty on all CWSRF loans. CDFI Borrowers must provide a written prepayment notification at least 30 days before the estimated pay off date.

(c) The CWSRF loan must be fully amortized with equal installment payments by the maturity date of the loan.

(11) Minor variations in loan terms for CWSRF Loans to CDFI Borrowers. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(12) Principal forgiveness for CWSRF Loans to CDFI Borrowers. DEQ may provide additional subsidization in the form of principal forgiveness, to the extent the federal capitalization grant and federal regulations allow, and as the criteria established in this section provide. A CWSRF loan to a CDFI Borrower with additional subsidization is subject to standard interest rates, fees, and other loan terms as defined in this rule.

(a) Eligibility. DEQ may provide additional subsidization in the form of principal forgiveness to a CDFI Borrower to the extent that the CDFI Borrower uses proceeds from the CDFI loan to fund sub-loans to sub-borrowers that have a household income at or below 75 percent of the US Census median household income in Oregon, as specified below.

(b) Principal Forgiveness Amounts. In no event will the amount of principal forgiveness to a CDFI exceed \$500,000 or 50 percent of the CWSRF loan amount.

(A) For CWSRF loan proceeds used by a CDFI Borrower to make a sub-loan to sub-borrower with an annual household income at or below 50 percent of the US Census median household income in Oregon, the CDFI Borrower may receive principal forgiveness of up to 50 percent of such proceeds.

(B) For CWSRF loan proceeds used by a CDFI Borrower to make a sub-loan to a sub-borrower with an annual household income at or below 75 percent of the US Census median household income in Oregon, but above 50 percent, the CDFI Borrower may receive principal forgiveness of up to 25 percent of such proceeds.

(C) A CDFI Borrower may receive only one principal forgiveness award per project period.

(d) A CDFI Borrower must pass through 100 percent of the CWSRF principal forgiveness award to its sub-borrowers in the form of sub-loan principal forgiveness.

(13) Sub-loan repayments for CWSRF loans to CDFI Borrowers. The use of principal, interest, and fees paid by sub-borrowers to the CDFI must be restricted to:

(a) Costs associated with servicing the sub-loans.

(b) The CDFI's septic loan fund to be loaned again for the same purpose.

(14) Debarment and suspension of CDFI Borrowers. A CDFI Borrower must comply with Subpart C of 2 C.F.R. part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R. part 1532, Responsibilities of Participants Regarding Transactions.

(15) CDFI Borrowers must submit to DEQ verification that plans and specifications, operating and maintenance requirements, inspection and certification of proper construction and performance, and any other applicable documentation required under OAR chapter 340, division 071 and division 073 to qualify for CWSRF loan disbursements.

(16) Audit. If DEQ requests it, a CDFI Borrower must submit audited financial statements to DEQ each year until the loan is repaid.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement's terms. Upon default by a CDFI Borrower, DEQ may proceed with one or more of the following:

(a) Pursuing any remedy available to it against the CDFI Borrower.

(b) Exercising its right to collect and liquidate collateral, including proceeds of collateral, pledged as security for the loan.

(c) Withholding any amounts otherwise due to the CDFI Borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If DEQ finds the loan to the CDFI Borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.

(d) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A CDFI Borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the CDFI loan and sub-loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the CDFI Borrower.

(19) Reservation of rights.

(a) A CDFI Borrower may require such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a CDFI Borrower that fails to carry out its obligations under OAR chapter 340, division 71 and 73.

(20) Other provisions and documentation for CWSRF loans to CDFI Borrowers. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the federal Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

[Summary: Amendment to the rule's title indicates the rule is only applicable to public agencies.]

340-054-0071

Purchase and Refinancing [a Public Agency's](#) Debt Obligation: Debt Obligation Purchase

DEQ may use the CWSRF to buy a public agency's debt obligation subject to all of the following limitations:

- (1) The debt was incurred after March 7, 1985.
- (2) The debt obligation does not exceed 30 years.

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

[Summary: Amendment to the rule's title indicates the rule is only applicable to public agencies.]

340-054-0072

Purchase and Refinancing [of a Public Agency's](#) Debt Obligation: Bond Purchase

- (1) Application requirements. All application requirements for a CWSRF loan as specified in OAR 340-054-0022 apply to a bond purchase under this rule.
- (2) Intended Use Plan and project priority list. All applications for a bond purchase are subject to IUP and project priority list development in the same manner as specified in OAR 340-054-0025.
- (3) Project ranking criteria. All applicants for a bond purchase will be ranked based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.
- (4) Reserves, CWSRF general fund and project funding. DEQ will allocate reserves and CWSRF general funds for a bond purchase in the same manner as specified in OAR 340-054-0036.
- (5) Requirements for a bond purchase.
 - (a) Clean Water Act plans. DEQ will only purchase a bond whose proceeds are used to finance a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.
 - (b) Refinancing an interim loan. A public agency may sell a bond to DEQ to refinance an interim loan or reimburse itself for self-generated funds used to pay DEQ-approved project

costs for treatment works if the public agency meets the conditions in OAR 340-054-0056(3).

(6) Conditions for bond purchase. The terms, conditions and requirements set out in OAR 340-054-0060 apply to a bond purchase.

(7) Bond purchase, terms and interest rates.

(a) Bonds. A bond DEQ purchases under this rule must be a revenue bond for a term not to exceed 30 years and meet the requirements specified in OAR 340-054-0065(2).

(b) Interest rates. OAR 340-054-0065(4)(b) specifies the base rate for a bond purchase. DEQ will calculate interest rates for bond purchase agreements executed on or after February 1, 2016, under OAR 340-054-0065(4)(f)(B).

(c) Interest accrual and payment. OAR 340-054-0065(5) sets the terms for interest accrual and payment for bond purchases under this rule.

(d) Annual fee. OAR 340-054-0065(6) specifies the annual fee for a bond purchase.

(e) Commencement of bond repayment. OAR 340-054-0065(7) prescribes when a public agency must begin principal and interest repayment for a bond DEQ purchased under this rule.

(f) Term. A public agency must fully repay bond purchases under this rule under a schedule DEQ prescribes. The term of the bond DEQ purchases under this rule will not exceed 30 years after project completion or the useful life of the asset financed by the bond, whichever is less.

(g) Minor variations in bond terms. DEQ may, as OAR 340-054-0065(9) specifies, authorize minor variations in financial terms of a bond purchased under this rule to facilitate administration and repayment of the bond.

(h) ~~Additional subsidization~~ Principal forgiveness. DEQ may provide additional subsidization to a public agency borrower in the form of principal forgiveness for a bond purchase in the same manner as for a loan under OAR 340-054-0065(12).

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



Draft Rules – Edits Incorporated

[Summary: The deleted text Division 54’s title is legacy language that no longer represents the projects eligible for CWSRF loan funding. The program isn’t limited to funding only wastewater treatment works projects and the program hasn’t been called the ‘construction grants program’ in nearly 30 years.]

Division 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

[Summary: Subsection (2)(b) incorporates the new eligible CWSRF borrower “qualified institutions” for the purpose of lending to address failing on-site septic systems.]

340-054-0005

Purpose

- (1) The rules in this division establish procedures and requirements for funding projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund.
- (2) This division:
 - (a) Assists a public agency to obtain financing for a project that enhances, protects or restores water quality.
 - (b) Assists a qualified institution to obtain financing to finance projects to either (i) repair or replace failing on-site septic systems or (ii) replace failing on-site septic systems with connections to an available sewer.
 - (c) Ensures the loan application and funding processes, procedures and requirements are clear.
 - (d) Promotes loan affordability by offering below-market interest rates.
 - (e) Ensures CWSRF’s perpetuity for project funding reliability to provide loans for future projects that enhance, protect or restore water quality.

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

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

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

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

[Summary: The new definitions incorporate the amended language in ORS 468.423 – 468.440 and lending terminology related to CDFI lending.]

340-054-0010

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 either (i) repair or replace failing on-site septic systems or (ii) replace failing on-site septic systems with connections to an available sewer under ORS 468.423.

- (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 is a failing system as that term is defined in OAR 340-071-0100(65).
- (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” has the meaning given in ORS 454.779(c).
- (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 eligible under OAR 340-054-0015 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 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

[Summary: Amendment (3)(a) and (3)(b) incorporates “qualified institutions” as the new eligible borrower for the specific activity of financing failing on-site septic repairs, replacements or connection to an available sewer.]

340-054-0015

Clean Water State Revolving Fund Loans: Eligible Projects and Activities

(1) A public agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

(a) Implementing a management program established under section 319 of the Clean Water Act.

(b) Developing and implementing a comprehensive conservation and management plan under section 320 of the Clean Water Act.

(c) Constructing, repairing, or replacing decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage.

(d) Managing, reducing, treating, or recapturing stormwater or subsurface drainage water.

(e) Developing and implementing watershed projects meeting the criteria set forth in section 122 of the Clean Water Act.

(f) Reusing or recycling wastewater, stormwater, or subsurface drainage water.

(2) A municipality or intermunicipal, interstate or State agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

(a) Constructing publicly owned treatment works.

(b) Acquiring the land that will be an integral part of the treatment process. These lands include land used for storing treated wastewater in land treatment systems prior to land application, or will be used for ultimate disposal of residues resulting from such treatment and acquiring other land, and interest in land, that are necessary for construction.

(c) Reducing the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.

(d) Reducing the energy consumption needs for publicly owned treatment works.

(e) Increasing the security of publicly owned treatment works.

(3) A qualified institution may apply for a CWSRF loan to finance the capital costs of sub-loans to its sub-borrowers for:

(a) Repairing or replacing failing on-site septic systems, or

(b) For the replacement of failing on-site septic systems with connections to an available sewer.

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

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

[Summary: Amendments clarify when a loan application requirement applies to all applicants or specific types of applicants.]

340-054-0022

Clean Water State Revolving Fund Loans: Loan Application Requirements

(1) Application submittal. DEQ will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible applicant may submit a CWSRF loan application to DEQ at any time.

(2) Consideration for funding. DEQ will consider an applicant for funding only if its project is included in the Intended Use Plan and its application meets all of this division's requirements.

(3) All CWSRF loans. An applicant must submit the following to DEQ:

(a) A complete application on the applicable DEQ form;

(b) Documents specified in the DEQ checklist of loan application requirements;

(c) Audited financial statements for the three years preceding the application date and the applicant's current budget, unless waived in writing by DEQ;

(d) Evidence the applicant has the authority to undertake the project including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account;

(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed project. DEQ may require an applicant to meet the following criteria for a revenue-secured loan described under OAR 340-054-0065(2) or OAR 340-054-0066(2):

(A) An applicant's revenue stream is not at risk from undue dependence on a limited portion of the system's or qualified institution's customer base or a pattern of delinquent payment from that portion of the system's or qualified institution's customer base, and

(B) An applicant must have the ability to collect from delinquent customers;

(f) Pre-award compliance review report or other evidence DEQ requires showing compliance with federal nondiscrimination requirements;

(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, constructing and operating the proposed project. The documents must be satisfactory to DEQ for determining an adequate pledge of security;

(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by DEQ;

(i) Official statement of recently issued bonds if required by DEQ;

(j) A DEQ-approved certification that the requirements for the cost and effectiveness analysis and the subsequent project selection are completed as required by section 602(b)(13) of the CWA;

(k) Any other information DEQ requests as necessary to complete the loan application.

(4) Local community loan. In addition to the requirements in section (3) of this rule, a public agency applying for a CWSRF local community loan must submit the following to DEQ:

(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.

(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to DEQ.

(c) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(d) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) DEQ-approved plans and specifications that comply with OAR chapter 340, division 52, unless waived by a DEQ engineer.

(g) An environmental determination obtained from DEQ for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from the scope the other agency accepted.

(B) The other agency's determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to DEQ:

(a) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

- (b) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.
- (c) An environmental determination obtained from DEQ for a construction project of a treatment works as defined in ORS 468.423, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project, that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:
- (A) An applicant must provide all necessary documentation to support DEQ's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.
- (B) Project construction must begin within five years of the environmental determination.
- (d) If an applicant does not obtain an environmental determination, as specified in subsection (5)(c) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:
- (A) The project scope must be essentially unchanged from that the other agency accepted.
- (B) The other agency's determination must have been made within the previous five years.
- (C) The applicant met and documented the federal environmental cross-cutting authorities.
- (e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.
- (f) For a construction-only loan, DEQ-approved plans and specifications for the project as OAR chapter 340, division 052 requires.
- (g) If the estimated cost of a wastewater treatment facility project is in excess of \$10 million, a value engineering study satisfactory to DEQ done prior to beginning construction. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.
- (6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a point source project must submit the following to DEQ:
- (a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project

to address the identified water quality problem. An applicant must have DEQ review and approve this document before signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system; and

(B) Introducing wastewater into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding selecting the most cost-effective alternative for the project.

(c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. DEQ will only consider a sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit an engineered planning report to DEQ. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.(8) Federal loans. In addition to the applicable requirements in sections (3)–(7) of this rule, a loan designated as a federal loan must meet the requirements for federally funded projects in the Clean Water Act Title VI and EPA’s January 6, 2015, memo “Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act.”

(9) CDFI loans. In addition to requirements in sections (3) and (5) of this rule, a qualified institution applying for a CWSRF loan must submit:

(a) Documentation demonstrating that all sub-loans will comply with applicable provisions of OAR chapter 340, division 71 and chapter 340, division 73.

(b) A description of how the project will implement OAR 340-054-0015(3).

(c) A projected cash flow statement based on anticipated number of sub-loans, sub-loan repayment schedule, amount and timing of sub-loan disbursements.

[Note: Publications referred to are not included here. The CWSRF Intended Use Plan is available from the agency. View a PDF of the EPA Interpretive Guidance 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 36-2017, minor correction filed 12/13/2017, effective 12/13/2017

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

[Summary: Amendment shortens the IUP’s public notice period to expedite the loan application process.]

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 OAR 340-054-0026 and 340-054-0027.

(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OAR 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 OAR 340-054-0026 and criterion 5 in OAR 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 60-2018, minor correction filed 04/04/2018, effective 04/04/2018

DEQ 38-2017, 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 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

[Summary: Amendment to the rule title distinguishes that ranking criteria for planning loans in this rule only apply to public agency borrowers, not to CDFI Borrowers.]

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

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

[Summary: Amendment to the rule title distinguishes that reserves, CWSRF general fund and project funding in this rule only apply to public agency borrowers, not to CDFI Borrowers.]

340-054-0036

Clean Water State Revolving Fund Loans to Public Agency Borrowers: Reserves, CWSRF General Fund and Project Funding

- (1) Allocation to reserves and CWSRF general fund. DEQ will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:
 - (a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve;
 - (b) A maximum of \$3 million to the planning reserve;
 - (c) An amount at least equal to the minimum required by the federal capitalization grant to the green project reserve;
 - (d) Amount of funds remaining, after allocation to the reserves as specified in subsections (a) through (c) of this section of the rule, to the CWSRF general fund.
- (2) Project funding increase.

(a) DEQ will offer a funding increase to a public agency borrower for an existing project based on the original project priority list ranking before offering a loan to an applicant for a new project loan if:

(A) Funds are available in the CWSRF; and

(B) The public agency borrower submits a written request to DEQ for additional funding, has the legal authority to borrow the increased loan amount and has the financial capability to repay the increased loan amount.

(b) Any funding increase DEQ awards to a public agency borrower will be in an amount specified in section (3) of this rule and will be done by increasing the amount of the borrower's existing loan or by DEQ making an additional loan to the public agency borrower at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year DEQ will assign a project to an appropriate reserve, to the CWSRF general fund or to both.

(b) Based on availability of funds in the CWSRF at the time of allocation, DEQ will allocate an amount to a borrower in project priority list rank order that:

(A) Is not more than the greater of \$2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. DEQ may allocate additional funds if funds are available after allocating the maximum amount under paragraph (b)(A) of this section of the rule to each public agency borrower who requested project funding in a state fiscal year;

(B) Is not more than the greater of \$750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated;

(C) Is not more than \$250,000 of the planning reserve; and

(D) Only finances the portion of a project funded under the green project reserve that DEQ determines meets federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by EPA requirements.

(c) During a state fiscal year DEQ will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(d) DEQ will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.

(4) Reallocation of reserve funds.

(a) DEQ may reallocate funds between small community and planning reserves and the CWSRF general fund unless demand exceeds available funds.

(b) DEQ will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. DEQ will determine the total amount of CWSRF funds to be allocated at a reduced interest rate through the sponsorship option in each state fiscal year.

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

[Summary: Amendments clarify when a loan use condition applies to all applicants or a specific type of applicants.]

340-054-0056

Clean Water State Revolving Fund Loans: CWSRF Loan Use Conditions

(1) Clean Water Act plans. DEQ will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. DEQ will not provide a loan that will be used to refinance another lender's long-term loan or other debt obligations.

(3) Refinancing an interim loan. DEQ may provide a loan to refinance an interim loan or self-generated funds used to pay DEQ-approved project costs if the public agency borrower:

(a) Provides DEQ with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. DEQ may provide short-term, construction-period financing for an eligible project if the following conditions are met:

(a) The CWSRF's liquidity is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed for prior obligations;

(b) The public agency borrower has a legally enforceable obligation for long-term project financing satisfactory to DEQ; and

(c) The loan agreement for interim financing will stipulate DEQ is not obligated to provide long-term financing for the project.

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

[Summary: Amendments distinguish that the loan agreements and conditions in this rule only apply to public agency borrowers, not to CDFI Borrowers; and repeal expired language.]

340-054-0060

Clean Water State Revolving Fund Loans to Public Agency Borrower: Loan Agreement and Conditions

DEQ will include conditions in a loan agreement that apply to the type of project being financed, including, but not limited to, the following:

(1) Timely use of loan funding.

(a) DEQ may cancel a loan agreement if a public agency borrower fails to begin using loan proceeds within two years after signing a loan agreement.

(b) Public agency borrowers that do not begin using loan proceeds within two years after signing a loan agreement will have a choice of canceling the loan and reapplying for DEQ funding or paying holding costs to DEQ.

(A) Holding costs are, on an annual basis, the estimated amount of the loan interest payable to DEQ, less the amount of the interest DEQ earned from the Treasurer's investment of funds for DEQ's account. DEQ will itemize holding costs on a semi-annual invoice DEQ sends to the public agency borrower. The public agency borrower must pay these costs within 30 days after DEQ sends the invoice.

(B) A public agency borrower may apply for a one-time one year extension to begin using loan proceeds.

(2) Accounting. A public agency borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(3) Records retention. A public agency borrower must retain project files and records for six years after project performance affirmative certification or project completion as DEQ determines or such longer period as applicable state or federal law requires. A borrower must also retain financial files and records for three years after the loan is repaid in full.

(4) Wage requirements.

(a) A public agency borrower for constructing a treatment works project must comply with all provisions of the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144 and 3146, as detailed in section 513 of the Clean Water Act. Wage rates must be based on the wage requirements of the Davis Bacon Act or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A public agency borrower for a project not specified in subsection (a) of this section of the rule must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Construction materials. A public agency borrower for a treatments works construction project must ensure that all of the iron and steel products used in the project are produced in the United States as required by section 608 of the Clean Water Act, also known as the American Iron and Steel Provision.

(6) Debarment and suspension. A public agency borrower must comply with Subpart C of 2 C.F.R part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R part 1532, Responsibilities of Participants Regarding Transactions.

(7) Engineering documents. If a public agency borrower uses CWSRF financing to construct a wastewater facility subject to OAR 340-052, it must submit to DEQ plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation OAR chapter 340, division 052 and OAR 340-054-0022 require.

(8) Inspections and progress reports.

(a) A public agency borrower must have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections during the construction phase of a wastewater facility subject to OAR 340-052 to ensure the project complies with approved plans and specifications. DEQ or its representative may enter property the public agency borrower owns or controls to conduct interim inspections. DEQ may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) DEQ may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR chapter 340,

division 052 support the project's successful implementation and completion. A public agency borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(9) Loan amendments.

(a) DEQ will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) DEQ will execute a loan amendment to a public agency borrower if:

(A) DEQ awards a public agency borrower an increase in the original approved loan amount at any time during the project;

(B) The public agency borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds; or

(C) DEQ determines a public agency borrower must meet additional federal or state requirements for CWSRF financing.

(10) Change orders. DEQ may approve or reject a change order based on the loan eligibility of the project modification and on engineering value under OAR 340-052-0015. A public agency borrower must submit a change order to DEQ for engineering and financial review:

(a) When any change order is executed, and

(b) Before executing any change order that exceeds \$100,000 or will alter project performance.

(11) Project performance certification for a wastewater facility. A public agency borrower must submit to DEQ, within a timeframe DEQ specifies, project performance documents to verify whether the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents may include, but are not limited to, construction certification, performance evaluation report or performance certification.

(12) Eligible construction costs. DEQ will only disburse loan funds for construction costs for work that complies with plans, specifications, change orders and addenda DEQ reviewed or approved.

(13) Adjustments. DEQ may at any time review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction or other discrepancies.

(14) Contract and bid documents. A public agency borrower must submit a copy of the awarded contract and bid documents to DEQ, including a tabulation of all bids received.

(15) Architectural and engineering services. Contractors for program management, construction management, feasibility studies, preliminary engineering design, design, engineering, surveying, mapping, or architectural related services must be selected as provided in ORS 279C.110 and OAR chapter 137, division 048; Federal loan recipients must also follow the federal requirements for selection of architectural and engineering services as provided in 40 U.S.C. Chapter 11. Federally recognized Indian tribal governments must follow the federal requirements for selection of architectural and engineering services as provided in 40 U.S.C. Chapter 11 or an equivalent tribal government requirement.

(16) Audit.

(a) If DEQ requests it, a public agency borrower must submit audited financial statements to DEQ each year until the loan is repaid.

(b) If a public agency borrower expends \$750,000 or more in federal funds, from all sources in a fiscal year the public agency borrower must have a single organization-wide audit conducted under the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. The public agency borrower must submit copies of all audits to DEQ within 30 days of completion. If a public agency borrower expends less than \$750,000 in a fiscal year the public agency borrower is exempt from federal audit requirements for that year. Records must be available to DEQ, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives for the purpose of making audits, examinations and copies.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement's terms. Upon default by a public agency borrower, DEQ may proceed with one or more of the following:

(a) Pursuing any remedy available to it against the public agency borrower.

(b) Appointing a receiver at the public agency borrower's expense to operate the facility that generates the pledged revenues.

(c) Setting and collecting utility rates and charges pledged as security for the loan.

(d) Withholding any amounts otherwise due to the public agency borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If DEQ finds the loan to the public agency borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.

(e) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A public agency borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the public agency borrower.

(19) Effect of document approval or certification.

(a) DEQ's review and approval of facilities plans, design drawings and specifications, or any other documents does not relieve a public agency borrower of responsibility to properly plan, design, build and effectively operate and maintain a project as required by law, regulations, permits, and good management practices.

(b) DEQ may not be held responsible for:

(A) Any project costs or any losses or damages resulting from defects in plans, design drawings and specifications, or other sub-agreement documents; or

(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(20) Reservation of rights.

(a) A public agency borrower may require such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a public agency borrower that fails to carry out its obligations under OAR chapter 340.

(21) Other provisions and documentation. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

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

DEQ 2-2008, f. & cert. ef. 2-27-08

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

[Summary: Amendments distinguish that loan types, terms and interest rates in this rule only apply to public agency borrowers, not to CDFI Borrowers.]

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.

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; 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.

(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. 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 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 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 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

[Summary: The new rule closely follows the structure of 340-054-0065 and includes all loan conditions, terms and interest rates that apply to CDFI Borrowers.]

340-054-0066

Clean Water State Revolving Fund Loans to CDFI Borrowers: Loan Conditions and Agreements, Terms, and Interest Rates

(1) The CWSRF loan to a CDFI Borrower may only be used 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.

(2) A CWSRF loan to a CDFI Borrower must be secured by one or a combination of the following, as determined to be appropriate by DEQ, and incorporated in the loan agreement:

(a) The CDFI Borrower's pledge of available net assets,

(b) A security interest in the CWSRF sub-loan portfolio, including the revenues, income and proceeds of the portfolio;

(c) A security interest in a deposit account, or

(d) Other obligations acceptable to DEQ.

(3) A CWSRF loan agreement with a CDFI Borrower must be:

(a) Properly executed.

(b) Include a covenant that requires the CDFI Borrower to maintain minimum cash flow sufficient to pay:

(A) All expenses of operating and maintaining the sub-loan portfolio project;

(B) All debt service on the CWSRF loan;

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

(c) Include a provision requiring the CDFI Borrower to maintain a pledged debt service reserve account dedicated to the CWSRF that meets the following requirements:

(A) The debt service reserve must be maintained in an amount equal to the lesser of:

(i) 10 percent of the loan principal balance, or

(ii) one year's debt service payments.

(B) A debt service reserve may be funded with the CDFI Borrower's cash, a letter of credit, repayment guaranty or other third party commitment that is satisfactory to DEQ.

(d) Maintain a loan loss reserve account at a level appropriate to the CDFI Borrower risk profile and the sub-loan portfolio and that is acceptable to DEQ.

(e) Include a provision requiring the CDFI Borrower to maintain an Aeris Insight, Inc. rating score of A or better. If Aeris Insight, Inc. is no longer providing ratings, include a provision requiring a risk management and credit rating score determined to be sufficient solely at the discretion of DEQ.

(A) If the CDFI Borrower cannot maintain a risk management and credit rating score determined to be sufficient by DEQ, DEQ may require the CDFI Borrower to have a higher debt service coverage ratio, a higher debt service reserve, or may take a first priority security interest in the CDFI Borrower's sub-loan portfolio or any combination of these debt securities.

(f) Include a requirement for the CDFI Borrower to conduct an annual review to ensure revenues in subsequent years will be sufficient to service the loan.

(g) Include a requirement that if either the debt service reserve account or the loan loss reserve account is depleted below the required level for any reason, the CDFI Borrower must take prompt action to restore the reserve(s) to the required minimum amount.

(i) Prohibit the CDFI Borrower from selling, transferring, or encumbering any asset acquired or established with the proceeds of the CDFI loan without the express written consent of DEQ.

(4) A CWSRF loan to a CDFI Borrower will be active and available for loan disbursements for 12 months after the loan is fully executed.

(b) After the 12 month period has ended, no further disbursements will be allowed on the loan unless an extension is granted in writing by DEQ. If necessary, the final loan amount and corresponding terms in the loan agreement will be amended to reflect the total amount disbursed during the project period.

(c) A repayment schedule will be calculated to begin no later than 12 months after the project period concludes.

(5) Limits for CWSRF Loans to CDFI Borrowers. There is an annual loan amount limit of \$2 million for any single CDFI Borrower and any single loan. There is an annual limit in the amount of \$10 million in new CWSRF Loans to CDFI Borrowers in the aggregate.

(6) Interest rates for CWSRF loans to CDFI Borrowers.

(a) Base rate. DEQ will calculate the base rate based on the weekly average of prime interest rates for the preceding quarter.

(b) The interest rate for a CDFI loan will be equal to 50 percent of the base rate.

(c) Interest rates on a CDFI's sub-loans shall not exceed a rate that is equal to the interest rate under the CDFI loan plus two percent.

(7) Interest accrual and payment period for CWSRF loans to CDFI Borrowers. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a CDFI Borrower. A CDFI Borrower must include all outstanding accrued interest with each loan repayment.

(8) Annual loan fee for CWSRF Loans to CDFI Borrowers. A CDFI Borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the repayment schedule in its loan agreement. This annual loan fee is in addition to any other payments a CDFI Borrower is required to make under its loan agreement.

(9) Commencement of loan repayment for CWSRF Loans to CDFI Borrowers. A CDFI Borrower must begin its loan principal and interest repayments within one year of the date of a fully disbursed loan or when DEQ determines that the project period has ended.

(10) Loan term for CWSRF Loans to CDFI Borrowers.

(a) A CDFI 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 CWSRF loan to a CDFI Borrower may not exceed twenty years.

(b) DEQ will allow prepayments without penalty on all CWSRF loans. CDFI Borrowers must provide a written prepayment notification at least 30 days before the estimated pay off date.

(c) The CWSRF loan must be fully amortized with equal installment payments by the maturity date of the loan.

(11) Minor variations in loan terms for CWSRF Loans to CDFI Borrowers. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(12) Principal forgiveness for CWSRF Loans to CDFI Borrowers. DEQ may provide additional subsidization in the form of principal forgiveness, to the extent the federal capitalization grant and federal regulations allow, and as the criteria established in this section provide. A CWSRF loan to a CDFI Borrower with additional subsidization is subject to standard interest rates, fees, and other loan terms as defined in this rule.

(a) Eligibility. DEQ may provide additional subsidization in the form of principal forgiveness to a CDFI Borrower to the extent that the CDFI Borrower uses proceeds from the CDFI loan to fund sub-loans to sub-borrowers that have a household income at or below 75 percent of the US Census median household income in Oregon, as specified below.

(b) Principal Forgiveness Amounts. In no event will the amount of principal forgiveness to a CDFI exceed \$500,000 or 50 percent of the CWSRF loan amount.

(A) For CWSRF loan proceeds used by a CDFI Borrower to make a sub-loan to sub-borrower with an annual household income at or below 50 percent of the US Census median household income in Oregon, the CDFI Borrower may receive principal forgiveness of up to 50 percent of such proceeds.

(B) For CWSRF loan proceeds used by a CDFI Borrower to make a sub-loan to a sub-borrower with an annual household income at or below 75 percent of the US Census median household income in Oregon, but above 50 percent, the CDFI Borrower may receive principal forgiveness of up to 25 percent of such proceeds.

(C) A CDFI Borrower may receive only one principal forgiveness award per project period.

(d) A CDFI Borrower must pass through 100 percent of the CWSRF principal forgiveness award to its sub-borrowers in the form of sub-loan principal forgiveness.

(13) Sub-loan repayments for CWSRF loans to CDFI Borrowers. The use of principal, interest, and fees paid by sub-borrowers to the CDFI must be restricted to:

(a) Costs associated with servicing the sub-loans.

(b) The CDFI's septic loan fund to be loaned again for the same purpose.

(14) Debarment and suspension of CDFI Borrowers. A CDFI Borrower must comply with Subpart C of 2 C.F.R. part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R. part 1532, Responsibilities of Participants Regarding Transactions.

(15) CDFI Borrowers must submit to DEQ verification that plans and specifications, operating and maintenance requirements, inspection and certification of proper construction and performance, and any other applicable documentation required under OAR chapter 340, division 071 and division 073 to qualify for CWSRF loan disbursements.

(16) Audit. If DEQ requests it, a CDFI Borrower must submit audited financial statements to DEQ each year until the loan is repaid.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement's terms. Upon default by a CDFI Borrower, DEQ may proceed with one or more of the following:

(a) Pursuing any remedy available to it against the CDFI Borrower.

(b) Exercising its right to collect and liquidate collateral, including proceeds of collateral, pledged as security for the loan.

(c) Withholding any amounts otherwise due to the CDFI Borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If

DEQ finds the loan to the CDFI Borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.

(d) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A CDFI Borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the CDFI loan and sub-loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the CDFI Borrower.

(19) Reservation of rights.

(a) A CDFI Borrower may require such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a CDFI Borrower that fails to carry out its obligations under OAR chapter 340, division 71 and 73.

(20) Other provisions and documentation for CWSRF loans to CDFI Borrowers. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the federal Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 – 468.440

[Summary: Amendment to the rule's title indicates the rule is only applicable to public agencies.]

340-054-0071

Purchase and Refinancing a Public Agency's Debt Obligation: Debt Obligation Purchase

DEQ may use the CWSRF to buy a public agency's debt obligation subject to all of the following limitations:

(1) The debt was incurred after March 7, 1985.

(2) The debt obligation does not exceed 30 years.

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

[Summary: Amendment to the rule's title indicates the rule is only applicable to public agencies.]

340-054-0072

Purchase and Refinancing of a Public Agency's Debt Obligation: Bond Purchase

- (1) Application requirements. All application requirements for a CWSRF loan as specified in OAR 340-054-0022 apply to a bond purchase under this rule.
- (2) Intended Use Plan and project priority list. All applications for a bond purchase are subject to IUP and project priority list development in the same manner as specified in OAR 340-054-0025.
- (3) Project ranking criteria. All applicants for a bond purchase will be ranked based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.
- (4) Reserves, CWSRF general fund and project funding. DEQ will allocate reserves and CWSRF general funds for a bond purchase in the same manner as specified in OAR 340-054-0036.
- (5) Requirements for a bond purchase.
 - (a) Clean Water Act plans. DEQ will only purchase a bond whose proceeds are used to finance a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.
 - (b) Refinancing an interim loan. A public agency may sell a bond to DEQ to refinance an interim loan or reimburse itself for self-generated funds used to pay DEQ-approved project costs for treatment works if the public agency meets the conditions in OAR 340-054-0056(3).
- (6) Conditions for bond purchase. The terms, conditions and requirements set out in OAR 340-054-0060 apply to a bond purchase.
- (7) Bond purchase, terms and interest rates.
 - (a) Bonds. A bond DEQ purchases under this rule must be a revenue bond for a term not to exceed 30 years and meet the requirements specified in OAR 340-054-0065(2).
 - (b) Interest rates. OAR 340-054-0065(4)(b) specifies the base rate for a bond purchase. DEQ will calculate interest rates for bond purchase agreements executed on or after February 1, 2016, under OAR 340-054-0065(4)(f)(B).

(c) Interest accrual and payment. OAR 340-054-0065(5) sets the terms for interest accrual and payment for bond purchases under this rule.

(d) Annual fee. OAR 340-054-0065(6) specifies the annual fee for a bond purchase.

(e) Commencement of bond repayment. OAR 340-054-0065(7) prescribes when a public agency must begin principal and interest repayment for a bond DEQ purchased under this rule.

(f) Term. A public agency must fully repay bond purchases under this rule under a schedule DEQ prescribes. The term of the bond DEQ purchases under this rule will not exceed 30 years after project completion or the useful life of the asset financed by the bond, whichever is less.

(g) Minor variations in bond terms. DEQ may, as OAR 340-054-0065(9) specifies, authorize minor variations in financial terms of a bond purchased under this rule to facilitate administration and repayment of the bond.

(h) Principal forgiveness. DEQ may provide additional subsidization to a public agency borrower in the form of principal forgiveness for a bond purchase in the same manner as for a loan under OAR 340-054-0065(12).

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

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