

CHAPTER 62-552
DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM

62-552.200	Definitions
62-552.300	General Program Information
62-552.350	Pre-construction Loans for Rate-Based Community Water Systems (Repealed)
62-552.360	Pre-construction Grants for Financially Disadvantaged Communities (Repealed)
62-552.370	Construction Grants for Financially Disadvantaged Communities (Repealed)
62-552.400	Program Administration Costs (Repealed)
62-552.420	Project Allowances (Repealed)
62-552.430	Loan Applications and Agreements
62-552.500	Funds Reserved for Specific Purposes
62-552.600	Project List Information (Repealed)
62-552.650	Priority Determination (Repealed)
62-552.655	Ranking Projects for Project List Development (Repealed)
62-552.680	Environmental Review
62-552.700	Planning, Design, Construction, and Procurement Requirements
62-552.800	Audits Required
62-552.900	Forms for the State Revolving Fund Program for Drinking Water Facilities (Repealed)

62-552.200 Definitions.

For purposes of this rule chapter:

(1) “Act” means the Federal Safe Drinking Water Act, 42 USC §300f et seq., as amended, December 2002, hereby adopted and incorporated by reference. This document is available from the Department’s Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08362>.

(2) “Asset management plan” means a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of and costs for rehabilitating, repairing, or replacing all assets as well as the schedule to do so. Subsection 62-552.700(7), F.A.C., provides details on the contents of the plan.

(3) “Capitalization grant project” means a project for which the project sponsor shall document compliance with specific federal requirements under subsection 62-552.700(1), F.A.C., in addition to the general requirements under subsections 62-552.700(2) through (6), F.A.C., to qualify for a loan. Capitalization grant project funding totals will be identified in an amount corresponding to the annual capitalization grant received by the Department from the United States Environmental Protection Agency (EPA).

(4) “Capitalized interest” means interest accruing at the loan interest rate and compounding annually from the time when disbursements are made until six (6) months before the first semiannual loan repayment is due.

(5) “Construction costs” means costs associated with allowable construction, equipment, materials, demolition, land acquisition, and system consolidation or regionalization.

(6) “Construction loan” means a financial assistance agreement to fund a drinking water construction project, equipment purchase, or system consolidation or regionalization. To be eligible for a construction loan, a planning document and plans and specifications must be accepted by the Department, the environmental review process described in Rule 62-552.680, F.A.C., must be complete, all required Department permits and authorizations must have been obtained, all necessary site certifications must have been submitted to the Department, and any other pertinent information deemed necessary for success of the project. For design/build projects, the approval of the procurement process shall be accepted in lieu of the plans, specifications, site certifications, and permits unless any portion of these documents are available at that time. The requirements for planning documents are described in subsection 62-552.700(2), F.A.C., and the requirements for plans and specifications are described in subsection 62-552.700(3), F.A.C.

(7) “Construction manager at risk” means a firm or other single entity that contracts with the project sponsor for a guaranteed maximum price for the work. The construction manager is responsible for performance under individual construction contracts.

(8) “Cost-effective” means the lowest present worth (or equivalent annual value) of the implementable and environmentally acceptable alternatives to achieve the project sponsor’s objectives considering capital costs as well as operation and maintenance

costs.

(9) "Department" means the Department of Environmental Protection, Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000. For electronic information requests and submittals, email SRF_Reporting@dep.state.fl.us.

(10) "Design/build" means a contracting procedure whereby a firm or other single entity contracts with the project sponsor for a fixed price or a cost-plus-a-fixed-fee with a guaranteed maximum price and is responsible for both design and construction of the project. The procurement process must be competitive best value or competitive qualifications based. For a competitive best value selection, the most advantageous proposal to the project sponsor is selected based on criteria that include price and other factors. For competitive qualifications based procurement, the qualifications of the responsible vendor are the primary consideration in the selection process and shall use open book accounting for this process.

(11) "Design loan" means a financial assistance agreement to fund design activities that will result in biddable, permissible plans and specifications for an eligible construction project. Design/build projects are not eligible for a design loan. Additionally, a planning document defining the scope of the project to be funded must have been accepted by the Department. The requirements for an acceptable planning document are described in subsection 62-552.700(2), F.A.C.

(12) "Financially disadvantaged community" means a municipality, county or agency (such as a county-wide department) thereof, franchised area, or other entity with a defined public water system service jurisdiction having a median household income of less than the statewide average. The median household income (MHI) data for loan recipients shall be updated on December 31st each year to adjust for economic changes in the state using the 5-year estimate established by the American Community Survey (ACS) (<http://www.census.gov/programs-surveys/acs/data.html>), computed as provided in the ACS publication, "American Community Survey Design and Methodology (January 2014)" (<http://www.census.gov/programs-surveys/acs/methodology/design-and-methodology.html>). The Department shall use the 5-year estimate from December 2016 for the 2017 MHI determinations and the data from the previous December of each year for subsequent determinations or from verifiable estimates.

(13) "Fiscal year" means the 12-month period between July 1 and the following June 30.

(14) "Fundable portion" means the portion of a priority list consisting of the projects to which funds allocated each year by the Department have been assigned.

(15) "Funds allocated each year by the Department" means funds that are available or expected to be available for loans during the fiscal year for which a priority list is being developed.

(16) "Interest rate" means the semiannual compounding rate at which charges are imposed on the unpaid principal, including capitalized interest, of a State Revolving Fund (SRF) loan as described in subsection 62-552.300(6), F.A.C. The interest rate for a loan shall not be less than zero percent.

(17) "Leveraged loan" means a loan issued by the Florida Water Pollution Control Financing Corporation (FWPCFC).

(18) "Loan Service Fee" means a fee paid by the project sponsor in an amount that ranges from two to four percent of the total loan amount less the portion of the loan for capitalized interest and shall not be included in the principal of the loan. The loan service fee shall be estimated at the time of execution of the loan agreement, revised with any increase or decrease amendment, and shall be finalized in the final loan amendment based on the total loan disbursed. The loan recipient shall pay the loan service fee from the first available repayments following the final amendment.

(19) "Planning loan" means a financial assistance agreement to perform the initial planning and administration for a project. The deliverable for this loan shall be a planning document. The requirements for the planning document are described in subsection 62-552.700(2), F.A.C. A planning loan shall not be used to acquire any interest in real property.

(20) "Planning portion" means the portion of the priority list consisting of projects that do not qualify for the fundable or waiting portion.

(21) "Pledged revenue" means revenue specifically approved by the Department and dedicated to the repayment of the loan.

(22) "Principal forgiveness" means the portion of a loan that does not have to be repaid.

(23) "Priority list" means the annual listing of Fundable, Waiting, and Planning portion projects.

(24) "Project" means the planning, design, or construction of any components or facilities associated with the supply, storage, transmission, treatment, disinfection, and distribution of drinking water, including rehabilitation. This includes components of a water/energy conservation project that meet EPA eligibility requirements. The scope of a project shall include those components or facilities that qualify for funding under this rule chapter.

(25) "Project costs" means costs for planning, design and construction, procurement of equipment and materials, contingency,

demolition, legal, technical services, land acquisition, system consolidation or regionalization, capitalized interest, and implementation of a qualifying conservation project.

(26) “Project sponsor” means an entity that owns a public water system that seeks or obtains financial assistance under this rule chapter.

(27) “Public water system” means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.

(28) “Request for inclusion” means completed form RFI-DW1, Request for Inclusion on the Drinking Water Priority List, effective July 17, 2017, hereby adopted and incorporated by reference. This form is available from the Department’s Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08361>.

(29) “Segment cap” means the maximum amount available to any one sponsor during a fiscal year. The segment cap amount shall be established at a public meeting approving the priority list and shall be less than or equal to 25 percent of the funds available. Adjustments to the segment cap amount shall be made at a list management public meeting if additional funds become available and all projects eligible for placement on the fundable portion of the priority list at the most recent list approval or list management public meeting have been funded.

(30) “Service area” means all connections and proposed connections to be served by the project sponsor’s public water system. Population of the service area shall be calculated by multiplying the number of service connections by the number of persons per connection. Persons per connection shall be calculated by dividing the community population by the number of households. The community population and number of households will be determined using the ACS 5-year estimate calculated as provided in subsection 62-552.200(12), F.A.C.

(31) “Small community” means a municipality or unincorporated community or other identifiable entity with a total service area population of less than 10,000.

(32) “Useful life” means for land – 100 years; conveyance pipes – 50 years; other structures such as buildings and tankage – 30 to 50 years; process equipment – 15 to 20 years; and auxiliary equipment such as power generators and controls – 10 to 15 years.

(33) “Waiting portion” means the portion of a priority list consisting of projects that are qualified to be on the fundable portion but cannot be placed on the fundable portion until there are sufficient funds.

(34) The following terms and phrases used throughout this rule chapter have the meaning given these words in Section 287.012, 403.8532, or 403.852, F.S.: best value, Florida Water Pollution Control Financing Corporation (also referred to as FWPCFC), and local governmental agencies.

Rulemaking Authority 403.8532 FS. Law Implemented 403.852, 403.8532 FS. History—New 4-7-98, Amended 8-10-98, 7-20-99, 7-17-17.

62-552.300 General Program Information.

(1) Steps involved in obtaining a loan.

(a) Request for Inclusion. The project sponsor shall submit a complete Request for Inclusion Form, referenced in subsection 62-552.200(28), F.A.C., to the Department to establish project ranking on the priority list as outlined in paragraph (1)(e), below.

1. The Department shall review requests for inclusion to verify eligibility and accuracy of the information provided.

2. Additional information shall be requested by the Department when the data provided by the project sponsor is incomplete or unclear.

(b) Documentation required for priority listing. The documentation that must be timely submitted to compete for funding at a priority list meeting varies depending on the type of loan being requested and is known as the readiness-to-proceed criteria.

1. For planning loans, the completed Request for Inclusion form and its necessary attachments are the only documentation required.

2. For design loans, the Request for Inclusion form and all planning documentation required in subsection 62-552.700(2), F.A.C., must be accepted by the Department, and the environmental review process described in Rule 62-552.680, F.A.C., must be complete.

3. For construction loans, the Request for Inclusion form and all planning and design documentation referenced in subsections 62-552.700(2) through 62-552.700(5), F.A.C., must be accepted by the Department and the environmental review process described in Rule 62-552.680, F.A.C., must be complete.

4. A project sponsor has the option to request a combined loan for both planning and design at the same priority list meeting. In this case, the completed Request for Inclusion form and its necessary attachments are the only documentation required to compete for funding. The project sponsor must agree to the submittal of biddable plans and specifications within 1-year after being placed on the fundable portion of the priority list to qualify for a combined planning and design loan.

(c) Priority List Public Meeting.

1. Except as provided in subparagraph 2., below, if funds are available for new projects, a priority list public meeting shall be held on the second Wednesday in August or as otherwise noticed in the *Florida Administrative Register* at least sixty (60) days in advance of the public meeting.

2. If the waiting portion from the previous fiscal year exceeds twice the anticipated available funds, no public meeting shall be held, unless it is necessary to add projects to meet federal requirements. If such a public meeting is held, only those projects necessary to comply with the federal requirements shall be considered. For the purposes of this paragraph, anticipated available funds means federal capitalization grants and state matching funds expected to be received during the state fiscal year, loan repayments minus debt service payments to be received during the state fiscal year, any carry over funds from the previous year, and anticipated interest earnings during the fiscal year.

3. If additional funds are available after the priority list public meeting, one or more priority list management public meetings shall be scheduled to allocate the additional funds.

(d) Readiness-to-Proceed Deadline. For a project to appear on the priority list, the sponsor shall have postmarked or delivered to the Department all documentation as required in paragraph (b), above, no later than 45 days before the priority list public meeting at which the project competes for funding. Electronic submittals to the Department are encouraged. The project sponsor must respond to all Department comments related to the required documentation and must submit these responses at least 15 days prior to the public meeting. The planning and environmental review process required for a design loan or construction loan shall be reviewed and accepted by the Department no later than 45 days before the priority list meeting. This does not include those qualified sponsors that have opted to combine both planning and design funding at a priority list meeting.

(e) Priority System. Timely submitted projects shall be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on public health and drinking water quality. The final priority score for each project shall be determined as described in subparagraphs 1. through 3., below.

1. Base Priority Score. Each project shall receive a base priority score (BPS) dependent on the weighted average of its components. The BPS shall be determined using the following formula where CPS means the component priority score and CCC means component construction cost or:

$$BPS = [CPS_1 \times CCC_1 + \dots + CPS_n \times CCC_n] / \text{Total Construction Cost}$$

a. Project components shall be assigned a component priority score (CPS) according to the categories in Table 1 below.

Table 1

Project Component	CPS
Acute Public Health Risk 1a. E-Coli or Fecal Coliform Maximum Contaminant Level (MCL) Exceedance (subsection 62-550.310(5), F.A.C.) 1b. Nitrate, Nitrite, or Total Nitrogen MCL Exceedance (subsection 62-550.310(1), F.A.C., Table 1) 1c. Lead or Copper Action Level Exceedance (Rule 62-550.800, F.A.C.) 1d. Surface Water Filtration and Disinfection Noncompliance (subsection 62-550.817(2), F.A.C.)	800 points
Potential Acute Public Health Risk 2a. Nitrate, Nitrite, or Total Nitrogen Exceed 50% of MCL (subsection 62-550.310(1), F.A.C., Table 1) 2b. Microbiological MCL Exceedance (subsection 62-550.310(5), F.A.C.) 2c. Surface Water Enhanced Filtration and Disinfection Noncompliance (subsection 62-550.817(3), F.A.C.) 2d. State Health Officer Certification of Acute Health Risk for Unregulated Microbiological Contaminants 2e. Violation of Disinfection Requirements (subsection 62-555.320(12), F.A.C.)	700 points
Chronic Public Health Risk 3a. Inorganic or Organic Contaminant MCL Exceedance (subsections 62-550.310(1), (4), F.A.C., Tables 1, 4, 5) 3b. Disinfection Byproducts MCL Exceedance (subsection 62-550.310(3), F.A.C., Table 3) 3c. Radionuclide MCL Exceedance (subsection 62-550.310(6), F.A.C.)	600 points
Potential Chronic Public Health Risk	500 points

4a. Inorganic or Organic Contaminant Exceed 50% of MCL (subsections 62-550.310(1), (4), F.A.C., Tables 1, 4, 5) 4b. Disinfection Byproducts Exceed 80% of MCL (subsection 62-550.310(3), F.A.C., Table 3) 4c. State Health Officer Certification of Chronic Health Risk for Unregulated Chemical Contaminants	
Compliance-1 5a. Infrastructure upgrades to facilities that are undersized, exceed useful life, or have continual equipment failures 5b. Insufficient water supply source, treatment capacity, or storage 5c. Water distribution system pressure less than 20 psi 5d. Eliminate dead ends and provide adequate looping in a distribution system 5e. Replace distribution mains to correct continual leaks, pipe breaks, and water outages 5f. New public water system or extension of existing system to replace contaminated or low yield residential wells 5g. Lack of significant safety measures (e.g. chemical containment) 5h. Secondary Contaminant MCL Exceedance (Rule 62-550.320, F.A.C.) 5i. Drinking water supply project as defined in paragraph 403.8532(9)(a), F.S.	400 points
Compliance-2 6a. Treatment, Storage, Power, and Distribution Requirements (Rule 62-555.320, F.A.C) 6b. Minimum Required Number of Wells (subsection 62-555.315(2), F.A.C) 6c. Well Set-back and Construction Requirements (Rules 62-555.312 and 62-555.315, F.A.C) 6d. Cross-Connection Control Requirements (Rule 62-555.360, F.A.C) 6e. Physical Security Project Documented in a Vulnerability Analysis 6f. Consolidation or regionalization of public water systems 6g. Water/Energy Conservation Project	300 points
Other Projects	100 points

b. Project component scores that are based on contaminant levels shall be justified by sample analytical data. The date samples were collected must be no older than 24-months from the date of submittal of a Request for Inclusion. The sample results shall show an ongoing and current problem with a drinking water quality standard. The project sponsor shall provide documentation demonstrating contaminant levels (e.g. disinfection byproducts) cannot be reduced by adjusting system operations, if applicable. Samples shall be analyzed by a state certified laboratory as defined in Rule 62-550.550, F.A.C.

c. A project component score of 400 points that is based on compliance-1 categories of Table 1 shall be supported by documentation demonstrating the need for the project; otherwise, a component score of 300 points will be assigned.

d. A project sponsor with a qualifying water conservation project is eligible to receive an additional 100 points added to their priority score if the sponsor provides a water conservation plan in accordance with EPA's Water Conservation Plan Guidelines, document number EPA-832-D-98-001, August 6, 1998, hereby adopted and incorporated by reference. The sponsor must demonstrate that the proposed project meets the objective of the water conservation plan. This document is available from the Department's Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or electronic versions are available at <https://www3.epa.gov/watersense/pubs/guide.html> or <http://www.flrules.org/Gateway/reference.asp?No=Ref-08363>.

e. If 50% or more of residential wells of a given project meet the contamination levels indicated in Table 1 and connect to a new or existing public water system, then the project would be awarded component priority points according to the appropriate public health risk. Surface water flooding of wells of residents with septic drainfields and wells under the direct influence of surface water are considered an unregulated microbiological potential acute public health risk, and require substantiated documentation of occurrence in lieu of sampling data.

2. Affordability Score. The extent of affordability existing in a small community to be served by the project shall be reflected in the priority score. Points shall be awarded based upon two affordability criteria: namely, median household income (MHI) and service area population. These points are to be added to the base priority score. Affordability Score = (MHI Score + Population Score).

a. MHI Score. MHI score shall be derived based on the extent a community's MHI falls below the statewide average. MHI data used to determine points shall be determined using the ACS 5-year estimate calculated as provided in subsection 62-552.200(12), F.A.C. or from verifiable estimates and shall represent all areas to be served by the project sponsor's public water system.

(I) MHI score shall not exceed a maximum of 75 points, shall not be less than zero points, and shall be rounded to the nearest

whole number.

(II) MHI score is calculated as follows:

MHI Score = $100 \times (1.00 - \text{MHI fraction})$, MHI fraction is equal to the MHI of the service area divided by the statewide MHI.

b. Population Score. Projects for small systems are generally less affordable than those for larger systems due to a limited rate base from which to recover costs. Special consideration is given to such projects based on service area population. Population data used to determine the score shall come from verifiable estimates and shall represent all areas to be served by the project sponsor's public water system.

(I) Population score shall not be less than zero points and shall be rounded to the nearest whole number.

(II) The population score is calculated as follows:

Population score = $50 - (P/200)$. P is the population of the service area.

3. Tie-breaking procedure. The sponsor with the larger population will have the higher priority.

(f) Priority List Development. The priority list is developed prior to the public meeting and includes the fundable, waiting, and planning portions. Projects that meet the requirements of paragraph (b), above, compete for placement on the fundable or waiting portions using a tiered ranking system. Tier 1 includes all projects previously on the fundable portion which require an increase to an existing loan, tier 2 includes new projects that receive a total priority score of 500 points or more, and tier 3 includes all other projects. Tier 1 is the highest priority and tier 3 is the lowest. Within each tier, projects are ranked in priority score order with the highest score at the top of the tier. Once the segment cap has been determined, the available funds are assigned to projects in tiers 1 and 2 moving down the list until all projects have been assigned funds, up to the lower of the requested amount or the segment cap, or until the available funds are exhausted. The unfunded balance is then placed on the waiting portion by tier then priority score order. If funds remain available, they are assigned to projects in tier 3 until the funds are exhausted or all projects have been funded. Projects that must be added to meet special provisions of a federal capitalization grant shall be added to the bottom of the fundable portion, bypassing projects that would otherwise be placed on the fundable portion. After the ranking of projects, the proposed priority list shall be posted on the Department's website before the priority list public meeting. Projects from tier 3 that do not receive any funding are placed on the planning portion in alphabetical order. To receive funding, projects on the planning portion must compete for funding at a subsequent priority list public meeting. The service area population and median household income values used to calculate priority score must be verified as the most current values prior to project placement on the priority list.

(2) Steps involved in obtaining a loan with principal forgiveness. Loans with principal forgiveness shall follow the process described in subsection 62-552.300(1), F.A.C., above, but the waiting and planning portions of the priority list are not applicable. Principal forgiveness loans are only assigned to those qualifying projects with the highest priority score until all projects have either been assigned funds or until all available funds have been exhausted. Principal forgiveness funds shall be made available twice per fiscal year or semiannually. Those projects not assigned a loan with principal forgiveness are eligible for loan only; but the project sponsor may opt out and reapply, and compete for principal forgiveness at the next semiannual priority list public meeting. Sponsors receiving principal forgiveness for a project adopted at a previous public meeting are ineligible for an increase in principal forgiveness unless the increase is deemed critical to the project. The principal forgiveness funds made available each year shall at least meet the minimum federal requirements. A maximum of 50% of the principal forgiveness funds available at each semiannual public meeting can be given to any one project. Principal forgiveness recipients are determined prior to each priority list public meeting. If a principal forgiveness recipient chooses to opt out before adoption on a priority list, then those principal forgiveness funds will be made available to the next qualifying sponsor or sponsors. If a project sponsor declines principal forgiveness or fails to meet Department deadlines after project adoption on the priority list, then those principal forgiveness funds will be made available to other projects at the next semiannual public meeting. The service area population and median household income values used to calculate the percentage of principal forgiveness must be verified as the most current values prior to placement of a project on the priority list.

(a) The project sponsor for a loan with principal forgiveness must qualify as a financially disadvantaged small community, except as stated in paragraphs 62-552.300(2)(f) and 62-552.300(2)(g), below.

(b) Principal forgiveness percentage.

1. Planning and/or design loan. The maximum principal forgiveness percentage available for a planning and/or design loan is 50 percent of total invoiced costs. Only a project sponsor that directly qualifies as a financially disadvantaged small community is eligible.

2. Construction loan.

a. The principal forgiveness percentage (PF%) for a construction loan shall be determined using the following formula:

$$PF\% = 1760/9 - 160 \times (MHI/SMHI) - 7/4500 \times P$$

Where:

MHI = Median Household Income

SMHI = State of Florida MHI

P = Population of the service area

$$20\% \leq PF\% \leq 90\%$$

b. The principal forgiveness amount available for a construction loan shall initially be based on the estimated construction costs. The final principal forgiveness amount shall be based on total invoiced costs.

3. Technical Services.

a. The maximum principal forgiveness percentage for technical services performed during the planning and design of a project is 50 percent of the total invoiced costs. Only a financially disadvantaged small community having a planning and/or design loan with the Department is eligible.

b. Technical services up to 5% of construction costs are eligible for loan with principal forgiveness. Technical services above 5% are eligible for loan only. Construction costs for this purpose exclude land acquisition and the non-construction portion of a system consolidation or regionalization project. These costs shall be incurred after bid opening.

4. Asset Management Plan. The maximum principal forgiveness percentage available for an asset management plan prepared and implemented in accordance with subsection 62-552.700(7), F.A.C., is 50 percent of total invoiced costs. Only a project sponsor that directly qualifies as a financially disadvantaged small community and has a construction loan with the Department is eligible.

(c) Those projects awarded a loan with principal forgiveness are eligible for a construction loan increase with principal forgiveness if the project sponsor can demonstrate that the proposed additional work is critical to the successful completion of the project; otherwise, the increase is eligible for loan only if within the scope of work. The increased portion of principal forgiveness shall not exceed the percentage calculated in subparagraph 62-552.300(2)(b)2., F.A.C., or the percentage given in paragraph 62-552.300(2)(g), F.A.C.

(d) The project sponsor shall have only one open loan with principal forgiveness. A loan shall be considered open until the final disbursement has been paid by the Department.

(e) The total principal forgiveness amount shall be estimated until the time of project close-out.

(f) A financially disadvantaged community with a service area population of 10,000 persons or greater is eligible for 20% principal forgiveness for a construction loan if dollars are available after funding all eligible financially disadvantaged small communities.

(g) A project sponsor that does not otherwise qualify as a financially disadvantaged small community is eligible for a construction loan with principal forgiveness if connecting a financially disadvantaged community that has less than 250 residential private wells or that has an existing public water system with less than 250 service connections. The sponsor that owns and operates a separate, non-interconnected, public water system that qualifies as a financially disadvantaged small community, regardless of the number of systems owned and operated by the sponsor, is eligible for a construction loan with principal forgiveness for that system. Verifiable documentation of the community's median household income, number of service connections, and estimated persons per household is required to calculate the percentage of principal forgiveness in accordance with these rules, not to exceed 50% of the construction loan amount. This type of project would follow the same priority listing process as a financially disadvantaged small community in competing for principal forgiveness dollars.

(3) Allowable Project Costs. Categories of allowable project costs include the following drinking water activities subject to such limitations for leveraged loans as are necessary to maintain the tax-exempt status of bonds issued by the FWPCFC:

(a) Land purchased, including easements and right-of-ways for construction of drinking water infrastructure. Funding shall be limited to the fair market value of the acreage, in fee simple, of land necessary for and integral to locate the project facilities thereon including mandatory set-backs. Funding for loans with principal forgiveness shall be limited to the appraised market value of the acreage. The appraisal report must be less than 12 months old at the time the construction loan application is received. If additional land is acquired, the eligible amount shall be the acreage of land necessary for the project divided by the total area purchased times the purchase price;

(b) Construction and related procurement;

(c) Demolition and removal of existing structures related to the project;

- (d) Contingency for project cost overruns under subsection 62-552.300(5), F.A.C.;
 - (e) Technical services after bid opening or award of design/build or construction manager at risk projects, and legal services resulting directly from the requirements of the Department supplied supplementary conditions that are included in the bid documents to comply with federal requirements, or legal services resulting from contractor non-compliance with the construction contract;
 - (f) Costs associated with interim financing for project sponsors that proceed without sufficient loan funds from the Department, for which the sponsor has received prior written authorization from the Department;
 - (g) Capitalized interest;
 - (h) Technical services for test wells, water quality testing, soil and hydrogeological testing, geotechnical evaluations, pilot studies, archaeological surveys, land surveys, and any other technical service deemed necessary for the planning, design, and construction of a project. Also for value engineering services performed by a SAVE International Certified Value Specialist. See the SAVE International website at <http://www.value-eng.org/>;
 - (i) Costs for project administration, planning, or engineering under a planning and/or design loan;
 - (j) Acquiring all or part of an existing public water system as part of a consolidation or regionalization project. The project sponsor shall demonstrate a substantial benefit to the existing public water system to be eligible for funding. Funding of an acquisition shall be limited to the fair market value. If the funding includes principal forgiveness, then the acquisition shall be limited to the appraised market value;
 - (k) Capacity purchase in an existing public water system;
 - (l) Preparation and implementation of an asset management plan. To be eligible for reimbursement, the asset management plan must meet the requirements of subsection 62-552.700(7), F.A.C.;
 - (m) The refinancing of unretired debt principal for a qualifying sponsor whose project meets the environmental review and procurement process of these rules; however, a project that is financed with a loan from the Department shall not be refinanced by the Department at a lower interest rate; and,
 - (n) Costs associated with the implementation of a qualifying conservation project.
- (4) Ineligible Project Costs.
- (a) Project facilities or activities not included within the Department approved project scope;
 - (b) Costs for the use of the project sponsor's personnel or equipment in the planning, design, or construction of project facilities;
 - (c) Costs incurred after the project closeout has been conducted by the Department to document project completion, final project costs, and adequacy of sponsor's project files;
 - (d) Project facilities or services for which the planning, design, construction and procurement requirements of Rule 62-552.700, F.A.C., are not met;
 - (e) Any project for which the construction loan amount is less than \$75,000;
 - (f) That part of any project primarily intended to serve future growth or fire protection not justified by public water system service demand projections in the planning documents;
 - (g) Costs incurred before the adoption of the project on the fundable portion of the priority list;
 - (h) Any portion of a project funded by an executed agreement from another regional, state, or federal funding agency;
 - (i) Service connections on private property; and,
 - (j) Any other cost not listed as allowable under subsection (3), above.
- (5) Project Contingency.
- (a) At the time of loan approval and when actual costs are unknown, project contingency shall not exceed 10% of the estimated sum of the construction costs and costs for allowable land. The contingency shall be adjusted by the Department to not more than 5% after procurement contracts have been executed. There shall be no contingency for land when the costs are known.
 - (b) The contingency funds remaining after accounting for contract change orders shall be retained by the Department when project closeout occurs.
 - (c) Contingency funds shall not be used to purchase equipment or pay for construction work or other activities not described in the loan agreement.
- (6) Interest Rate.
- (a) The interest rate shall be calculated as follows:

$$\% \text{ of MR} = 40 \times (\text{MHI}/\text{SMHI}) + 15$$

Where:

% of MR = Percentage of Market Rate

MHI = Median Household Income

SMHI = State of Florida MHI

$35\% \leq \% \text{ of MR} \leq 75\%$

When bond proceeds are available for leveraged loans, the market rate shall be the most recent rate at which bonds were sold by the FWPCFC. When bond proceeds are not available, the market rate for interest shall be established using the Thomson Publishing Corporation's "Bond Buyer" 20-Bond GO Index. The market rate is established by the Department as of January 1, April 1, July 1, and October 1 of each year and it is the average weekly yield during the three (3) months immediately preceding the date of determination. The average weekly yield is derived from the yields reported in the "Bond Buyer" for the full weeks occurring during the three-month period. The median household income value used to calculate the interest rate must be verified as the most current value prior to execution of the loan agreement.

(b) The interest rate shall be fixed for the principal amount of a planning and/or design loan including any amendments and for the duration of the loan repayment period. A planning loan may be rolled into a design loan but the interest rate remains fixed. A design loan cannot be rolled into a construction loan.

(c) The interest rate shall be fixed for the principal amount of a construction loan including any amendments and for the duration of the loan repayment period, except for the qualified adjustments below. The adjustments shall not reduce the interest rate below zero percent.

1. Projects with a Department accepted and implemented asset management plan that meets all requirements in subsection 62-552.700(7), F.A.C., shall be eligible for an interest rate reduction of 0.1% if implementation has been verified at least three (3) months prior to the first scheduled repayment.

2. Projects that have at least a 25% cost component that qualifies as a drinking water supply project as defined in paragraph 403.8532(9)(a), F.S., or as a water conservation project shall be eligible for an interest rate reduction of 0.25% if the project sponsor provides the required supporting documentation outlined in subparagraph 62-552.300(1)(e)1., F.A.C. For these projects the interest rate reduction shall be applied only after the project has been bid.

3. Projects that include a requirement for Davis Bacon wage rates as provided in 29 C.F.R. Part 5, Subpart A (7-1-2013 Edition), hereby adopted and incorporated by reference, shall be eligible for an interest rate reduction of 0.25%. This document is available from the Department's Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08366>.

4. Projects that include a requirement for American Iron & Steel (AIS) as provided in 40 C.F.R. Part 35, Subpart E (7-1-2013 Edition), or 2 C.F.R. Part 176, Subpart B (1-1-2013 Edition), hereby adopted and incorporated by reference, shall be eligible for an interest rate reduction of 0.75%. This document is available from the Department's Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08368> and <http://www.flrules.org/Gateway/reference.asp?No=Ref-08365>.

(7) Debt coverage for non-governmental sponsors. A non-governmental sponsor of a project that qualifies for funding shall document that it has a current term debt and capital lease coverage ratio of at least 1.15. This ratio shall have, as its numerator, net operations income plus non-operating income plus depreciation plus interest on term debt (multi-year debt) minus payroll and income taxes minus owner withdrawals; and, as its denominator, the sum of scheduled payments on term debt and long-term leases.

(8) A project sponsor with an executed loan agreement with the Department or with an adopted project on the fundable portion of a priority list prior to the effective date of this rule chapter shall be governed under the rules in effect at that time. The sponsor shall not be eligible for a time extension to submit documentation required by a preconstruction loan agreement or an adopted project on a priority list. Failure to meet the time frames provided shall render an agreement or priority listing null and void. The sponsor shall not be eligible for a funding increase for a construction loan unless the sponsor's project was adopted on the contingency portion of a priority list prior to the effective date of this rule chapter, or unless the sponsor can demonstrate that an increase is critical to the successful completion of the project. A preconstruction loan is not eligible for rollover into a construction loan and no additional allowances shall be available upon completion of a preconstruction loan agreement.

(9) Exceptions to Program Requirements.

(a) The Department shall consider a request for an exception to the requirements of this chapter if the exception does not conflict with state or federal law or federal regulations.

(b) A request for exception must contain the following information:

1. The name of the project sponsor, project number, award date, application date, and the financial assistance amount involved,
2. The specific rule to which an exception is requested,
3. A complete description of what the exception would accomplish and justification for the exception,
4. A statement of whether the same or a similar exception previously has been sought; and, if so, an explanation of the reason for that request and the outcome,
5. A demonstration that compliance with the specified rules is unnecessary for abatement of pollution and protection of public health; and,
6. A demonstration that the economic, social, and environmental costs of compliance exceed the economic, social, and environmental benefits of compliance.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-20-99, 7-17-17.

62-552.350 Pre-construction Loans for Rate-Based Community Water Systems.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 8-10-98, Amended 7-20-99, Repealed 7-17-17.

62-552.360 Pre-construction Grants for Financially Disadvantaged Communities.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 8-10-98, Amended 7-20-99, Repealed 7-17-17.

62-552.370 Construction Grants for Financially Disadvantaged Communities.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 8-10-98, Amended 7-20-99, Repealed 7-17-17.

62-552.400 Program Administration Costs.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 7-20-99, Repealed 7-17-17.

62-552.420 Project Allowances.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-20-99, Repealed 7-17-17.

62-552.430 Loan Applications and Agreements.

(1) General.

(a) A complete loan application, Form Application DW-1, State Revolving Fund Loan Program for Drinking Water Facilities Loan Application, effective July 17, 2017, hereby adopted and incorporated by reference, shall be submitted to the Department within 120 days after the project is listed on the fundable portion of the priority list. The project sponsor may incorporate into the loan application, by reference, any information previously submitted to the Department. This form is available from the Department's Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08322>.

(b) To receive a loan, a project sponsor must submit a complete loan application, provide reasonable assurance that it has the financial capability to complete the project and repay the loan, and enter into a negotiated written agreement. Loan agreements shall be offered to project sponsors for projects listed on the fundable portion of the priority list in the order of receipt of a complete loan application irrespective of priority score, project rank, or qualification for the financially disadvantaged and small-community reserve funds.

(c) If a project sponsor does not submit a complete loan application within 120 days, or a loan agreement is not executed within 210 days after a project is added to the fundable portion, the project shall be removed from the priority list at the next scheduled public meeting; unless the project sponsor can show good cause prior to that meeting documenting why the application was not submitted or why the agreement was not executed by the appropriate deadline. For the purpose of this paragraph, good cause shall mean unforeseen circumstances outside of the sponsor's control or a showing that the sponsor is making a diligent effort to complete or execute the loan application or loan agreement.

(d) Project sponsors shall provide reasonable financial assurance that project activities will be completed, including requirements for service providers and equipment suppliers or manufacturers to provide performance guarantees, insurance covering

workers' compensation, comprehensive general liability, vehicle liability, and property damage to the extent that coverage is available for project activities.

(e) The Department shall have the primary responsibility for drafting the loan agreement and setting its terms. The loan agreement shall have terms to meet program requirements. Loan agreement covenants may vary for direct and leveraged loans. Projects being funded under (or pursuant to) different sections of the Act or as a result of different sources of pledged revenues may have different loan agreement provisions.

(2) Pledged Revenues. The loan recipient shall make deposits of pledged revenues to a restricted or assigned debt service account and shall be responsible for the maintenance of that account.

(a) Pledged revenues for projects sponsored by a local government shall be a minimum of 1.15 times the amount required to make each semiannual loan repayment unless the project sponsor establishes a restricted or assigned reserve account in an amount not less than the equivalent of two semiannual loan repayments. The pledged revenue coverage for the loan from the Department shall not be transferred or derived from coverage required by senior lien debt instruments.

(b) Pledged revenues for projects sponsored by other than a local governmental agency shall be a minimum of 1.15 times the amount required to make each semiannual loan repayment and shall be secured with collateral having an appraised market value not less than 125% of the total of both the dollar amount owed on the property and the dollar amount of the SRF loan principal. The appraisal report must be less than 12 months old at the time the loan application is received. The loan applicant must own the real property in fee simple without any encumbrances on the title that would prevent sale of the property in case of default on the loan.

(3) Legal Affirmation. When a loan agreement executed by a project sponsor is submitted to the Department for execution, it shall include an affirmation by the project sponsor's legal counsel that:

(a) The loan agreement constitutes a valid and legal obligation of the borrower;

(b) The loan agreement specifies the revenues pledged to the repayment of the loan; and,

(c) The pledge is valid and enforceable.

(4) Security. The Department shall have no lien on or security interest in or claim on any monies or property except as expressly provided in the loan agreement and, for projects sponsored by other than a local government, the security interest agreement.

(5) Assurance of Compliance. The project sponsor shall provide assurance that:

(a) Records will be kept using generally accepted accounting practices. The Department, the Auditor General, and their agents shall have access to all records pertaining to the loan.

(b) Project facilities will be properly operated and maintained and best management practices shall be continued, as appropriate.

(c) Loan funds will not be used for the purpose of lobbying.

(6) Disbursements. Disbursements to the project sponsor shall be for allowable invoiced costs, unless the project sponsor qualifies and is approved for advanced payments in accordance with subsection 216.181(16), F.S. Disbursements shall be subject to the following requirements:

(a) Requests for disbursements for construction, technical services, and for planning and design costs shall be accompanied by itemized summaries of the materials, labor, or services to identify the nature of the work performed. The disbursement package shall also include a statement that the construction or other services for which payment or reimbursement is sought has been satisfactorily performed;

(b) The materials, labor, and services shall be part of the approved project scope; and,

(c) The disbursement shall be due under the terms of the loan agreement, and there shall be money available under the loan agreement for payment.

(7) Repayments. The project sponsor shall begin repaying a loan no later than the date scheduled under the loan agreement. The scheduled date shall be six (6) months after the estimated completion date or, for projects using interim financing to complete the project prior to receiving a SRF loan, six (6) months after the first available interim loan payoff date.

(8) Loan Repayment Term.

(a) Loan repayment periods for construction projects sponsored by a local governmental agency shall be limited to twenty (20) years or the useful life of the project, whichever is less. Loan repayment periods may be extended to a maximum of thirty (30) years or the useful life of the project, whichever is less, as allowed under the Act for projects to benefit a small community that is financially disadvantaged.

(b) Repayment periods for construction loans sponsored by other than a local governmental agency shall be limited to twenty (20) years or the useful life of the project, whichever is less.

(c) Repayment periods for planning and design loans shall be limited to ten (10) years.

(9) Annual Certification. No later than three (3) months prior to the first loan repayment and annually thereafter until the final loan repayment is made, the project sponsor's authorized representative or its chief financial officer shall submit a certification that:

(a) Pledged revenue collections satisfy the rate coverage requirement;

(b) The debt service account contains the funds required;

(c) The restricted or assigned pledged revenue account contains the funds required, if applicable; and,

(d) For loans awarded after July 17, 2017, the revenue generation system is in conformance with subparagraph 62-552.700(2)(i)3., F.A.C.

(10) Remedies for Defaults. Remedies for delinquent loan repayment and other events of default shall be limited to those set forth in the loan agreement. Events of default shall include non-compliance with any of the terms of the loan agreement. No delay or omission to exercise any right or power accruing upon an event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-20-99, 7-17-17.

62-552.500 Funds Reserved for Specific Purposes.

(1) Small Community Reserve.

(a) Fifteen percent of the funds allocated each year by the Department shall be reserved to fund projects that will serve small communities.

(b) When the priority list is adopted, any part of the reserved amount not needed for small community projects shall become available for all projects.

(2) Financially Disadvantaged Community Reserve.

(a) Up to fifteen percent of the funds allocated each year by the Department less the amount of any bonds issued or to be issued by the FWPCFC or up to the maximum percentage allowable of the Federal Capitalization Grants for Drinking Water SRF in any fiscal year, whichever is less, shall be reserved to fund projects that will serve financially disadvantaged communities.

(b) When the priority list is adopted, any part of the reserved amount not needed for financially disadvantaged community projects shall become available for all projects.

(3) Funds reserved for principal forgiveness. If required in the federal capitalization grant, funds shall be reserved for providing loan principal forgiveness to projects that qualify as a financially disadvantaged small community. The percentage of principal forgiveness shall be determined as described in paragraph 62-552.300(2)(b), F.A.C.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-20-99, 7-17-17.

62-552.600 Project List Information.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, Repealed 7-17-17.

62-552.650 Priority Determination.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 7-20-99, Repealed 7-17-17.

62-552.655 Ranking Projects for Project List Development.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, Repealed 7-17-17.

62-552.680 Environmental Review.

(1) General.

(a) The Department shall perform an environmental review for each project to be funded. The environmental review shall evaluate the environmental significance of a proposed project and whether the planning of the project meets the requirements of this chapter. The results of the Department's environmental review for each project shall be issued as an environmental information document which shall be valid for five (5) years from the date of issue, after such time, the document is no longer valid unless a Florida Reaffirmation Notice, pursuant to subsection 62-552.680(5), F.A.C., is written by the Department. The different

environmental information documents are described in subsections (2) through (5), below. A notice of availability of an environmental information document shall be published in the *Florida Administrative Register* to announce the results of the Department's environmental review. The notice of availability shall include instructions about the procedures for accessing the project information and the Department's findings. The Department shall provide a thirty (30) day period commencing as of the date of the notice of availability for public comment about the environmental impacts of proposed projects. Written comments from the public shall be considered by the Department before approving a project for funding if postmarked or delivered within the thirty (30) day comment period to the Department.

(b) The project sponsor shall document cultural, historical, archaeological, and biological aspects of a project during the planning process. Conditions shall be placed on a financial assistance loan agreement to enhance the compatibility of the project with the existing environment when such conditions will satisfy environmentally based objections to the project.

(c) Review procedures, identical to those described in this subsection, shall be used when the Department amends an environmental information document to announce project changes that have potentially significant environmental impacts.

(2) Florida Categorical Exclusion Notice (FCEN). The Department shall issue a FCEN for certain projects that are not expected to generate controversy over potential environmental effects. A FCEN shall not be used when there are documented environmental objections to a project before the local governmental agency adopted the planning recommendations provided that such objections have a basis in statute, regulation, or ordinance.

(a) In issuing a FCEN, the Department shall:

1. Briefly describe the project, the justification for the categorical exclusion, and the proposed loan funding.
2. Conclude the environmental review only after the 30-day public comment period, under subsection (1), above, has expired and:

- a. No information is received about adverse environmental impacts,
- b. Information is received about adverse environmental impacts and the objections either are without a basis in statute, regulation, or ordinance or the objections are resolved, or
- c. Information is received about adverse environmental impacts, the FCEN is rescinded, and an environmental review is undertaken according to subsection (3) or (4), below.

(b) Projects potentially eligible for categorical exclusion are:

1. Rehabilitation of existing facilities or replacement of existing structures, wells, waterlines, or equipment,
2. Facilities for the disinfection of public water supplies,
3. Facilities that will not result in more than a 50% increase of existing public water system capacity and there is no acquisition of land other than easements and rights-of-way where streets have been established, underground utilities installed, building sites excavated, or where such lands have otherwise been disturbed from a natural condition,
4. Back-up supply wells where, after disinfection, existing water quality meets drinking water standards and there is no acquisition of land; and,
5. Facilities that will result solely in the provision of adequate public water system pressure.

(3) Florida Finding of No Significant Impact (FFONSI). The Department shall issue a FFONSI when a project sponsor proposes a project not categorically excluded from a detailed environmental review and not requiring a Florida Environmental Impact Statement. In issuing a FFONSI, the Department shall:

(a) Record the basis for the decision to provide financial assistance for the project, addressing:

1. The environmental consequences of the project,
2. The purpose and the need for the project,
3. The alternatives, including no action, and the cost considerations for the project,
4. Any environmental enhancement measures to be implemented,
5. The public participation process,
6. The results, if available, of the State Clearinghouse Review; and,
7. Compliance with relevant rules of the Department.

(b) Consider public comments about environmental impacts of a project if the comments are received within 30 days after the date of posting of the notice of availability.

(c) Conclude the environmental review for the project only after the 30-day comment period has expired, and:

1. No information is received about previously unconsidered adverse environmental impacts; and,

2. Information is received about previously unconsidered adverse environmental impacts and one of the following occurs:
- a. The objections are either without a basis in statute, regulation, or ordinance or the objections are resolved,
 - b. A re-evaluation of the project is made as a result of the comments and the Department confirms the original decision or requires environmental enhancement measures before implementing the project, or
 - c. The FFONSI is rescinded.

(4) Florida Environmental Impact Statement (FEIS). A FEIS and a Florida Record of Decision (FROD), as required in 40 CFR Part 35 Subparts K & L, shall be used for a project for which there is an adverse direct or indirect impact on land use and population patterns, the quality of the environment, cultural or environmental resource areas, or the habitats of endangered or threatened species. A FEIS and FROD also shall be used when there is unresolved public controversy over the environmental impacts of a project provided that the objections to the project have a basis in statute, regulation, or ordinance. A FEIS shall be prepared by the Department or, at the direction of the Department and in accordance with the Consultants' Competitive Negotiation Act, Section 287.055, F.S., by others with no conflicting interest in the outcome. In completing the environmental review, the Department shall:

- (a) Issue a notice of intent to prepare a FEIS for the project;
- (b) Develop a plan of study and convene a meeting of government, including EPA, and other interested parties to determine the scope of the FEIS;
- (c) Identify and evaluate project alternatives;
- (d) Provide for public participation and review by federal and state environmental regulatory agencies;
- (e) Ensure that adverse impacts of the project are minimized or eliminated;
- (f) Document the findings of the environmental review using both the FROD and FEIS;
- (g) Announce the funding eligibilities using a FROD and consider public comments about environmental impacts if received during the thirty (30) day period beginning on the date of posting of the notice of availability in the *Florida Administrative Register*; and,
- (h) Conclude the environmental review only after a 30-day public comment period has expired without receipt of comments about adverse environmental impacts or if, after receipt of such comments, the Department takes action to:
 1. Confirm the original decision,
 2. Require additional analysis and environmental enhancement as a condition of confirmation of the original decision, or
 3. Rescind the original decision.

(5) Florida Reaffirmation Notice (FRAN). A FRAN shall be used to establish the Department's continuing intention to make funds available for unimplemented projects, the planning for which was previously documented as accepted by the Department in a FCEN, FFONSI, FROD, or analogous documents issued by EPA, or amendments to any of the foregoing that are no longer valid after five (5) years have elapsed since issuance. In issuing a FRAN, the Department shall:

- (a) State the findings being reaffirmed.
- (b) Consider public comments about changed conditions altering the environmental impacts since the previous FCEN, FFONSI, FROD, or analogous documents issued by EPA, or amendments to any of the foregoing. Comments shall be considered if received during the thirty (30) day period beginning on the date of posting of the notice of availability of the FRAN in the *Florida Administrative Register*.
- (c) Conclude the environmental review only after the public comment period has expired, and:
 1. No information is received about changed conditions resulting in adverse environmental impacts; and,
 2. Information is received about changed conditions resulting in adverse environmental impacts and one of the following occurs:
 - a. The objections are resolved,
 - b. A re-evaluation of the project is made as a result of the comments and the Department confirms the original decision or requires environmental enhancement measures before implementing the project, or
 - c. The FRAN is rescinded.

(6) State Clearinghouse. Project planning documentation shall be submitted to the state clearinghouse for review in accordance with Section 403.061(42), F.S. All comments resulting from this review shall be addressed by the Department prior to its approval of the planning documentation.

(7) Project Revision Memoranda (PRM). For a project that requires modifications to the selected alternative that does not alter its environmental effects, a PRM shall be written by the Department to document the changes.

62-552.700 Planning, Design, Construction, and Procurement.

(1) General. The requirements of subsections (2) through (6), below, shall be met for all projects. Qualifying projects, including eligible conservation projects, may only need a subset of these requirements depending on the scope of work.

(a) Federal regulations incorporated by reference shall be read so that the terms "United States," "federal," "EPA," and "officials of EPA" mean "the Department" unless the context clearly indicates otherwise.

(b) Capitalization grant projects shall be subject to the requirements of specific federal cross-cutting authorities identified in the loan application.

(2) Project Planning Documentation. The project sponsor shall submit the following planning documentation. Electronic submittals are encouraged.

(a) Sufficient illustrative detail of the local area to identify where the project or activity would be located to include existing and proposed service areas. Landmarks and other readily identifiable features shall be noted.

(b) A description of the existing and recommended facilities and system performance, projection of population and water demand, present and historic water usage and population, estimated capital costs, and estimated operation and maintenance costs, if applicable.

(c) Identify and locate wellhead and source water protection areas that may be impacted and potential pollution sources that may affect drinking water sources within the project area as a result of the proposed project.

(d) Summary of any technical services performed in project planning and design as described in paragraph 62-552.300(3)(h), F.A.C.

(e) The need or justification for the project or activity and the environmental and economic impacts and benefits of the project.

(f) A cost comparison of at least three alternatives, unless it can be demonstrated that fewer alternatives are available. The project sponsor shall demonstrate that all viable, cost effective alternatives were considered.

(g) Resolution of comments received by the Florida State Clearinghouse during its intergovernmental review of the project.

(h) The public participation process used to explain the project and the financial impacts to the public.

(i) Financial feasibility information addressing the following:

1. The sources and amounts of revenues to be dedicated to repaying the loan and the expenses, charges, and liens against or to be paid from such dedicated funds or revenues. The information shall demonstrate the ability to repay the loan with a margin of safety. Examples of a margin of safety are as follows:

a. Pledged revenue coverage ratio of at least 1.15 for projects sponsored by a local governmental agency; and,

b. A current term debt and capital lease coverage ratio of at least 1.15, as explained in subsection 62.552.300(7), F.A.C., for projects sponsored by other than a local governmental agency.

2. Capital improvements that will be financed from the same funds or revenues dedicated to repaying the loan.

3. The proposed system of charges, rates, fees, and other collections that will generate the revenues to be dedicated to loan repayment. The rate structure of the revenue generation system shall be approved at least six months before the first State Revolving Fund loan repayment is due or before the project closeout, whichever occurs first. The rate structure shall be implemented in a timely manner to ensure the generation of sufficient revenues dedicated to loan repayment and may be implemented in phases to the extent timely and sufficient revenue generation will be accomplished. The revenue generation system shall be revised, as necessary, to satisfy the pledged revenue requirements of the loan.

(j) An updated Request for Inclusion to include the schedule, scope, and costs for implementing the recommended facilities or activities, if necessary.

(k) An adopting resolution or other action establishing a commitment to implementing the planning recommendations.

(3) Plans and Specifications. The project sponsor shall submit biddable plans and specifications conforming to the planning documentation described in subsection 62-552.700(2), F.A.C., for projects involving construction. For design/build projects, the sponsor shall submit a copy of the request for qualifications, or requests for proposals, and the preliminary design report shall be submitted for permitting. Final permitted plans and specifications shall be submitted for each component of the project. Electronic submittals are encouraged.

(4) Site Certification. The project sponsor shall certify that all sites necessary for the construction, operation, and maintenance of the project or to otherwise carry out project activities over the useful life of the project are available.

(5) Permitting. The project sponsor shall submit evidence that all required permits have been obtained, or written documentation from the applicable permitting authorities that the project will be permitted, or that a permit is not required.

(6) Procurement. Procurement must be in conformance with 40 CFR 31.36, (July 1, 2011), hereby adopted and incorporated by reference. This document is available from the Department's Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08367>. When procuring property and services under a SRF loan, a project sponsor shall follow the policies and procedures it uses for procurements from its non-SRF funds provided that the procurement conforms to applicable federal, state and local laws and regulations, and the following requirements:

(a) All procurement transactions shall be conducted in a manner providing full and open competition. The use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals is prohibited. For small purchases that cost \$100,000 or less, a price or rate quotation shall be obtained from a minimum of two qualified sources.

(b) Construction contractors shall be selected according to a recognized procurement method such as formal advertised competitive bidding, competitive best value or competitive qualifications based proposals, or noncompetitive proposals. Delivery methods shall be design/bid/build, design/build or construction manager at risk.

(c) Requirements for the formal advertised competitive bidding method of procurement shall be as follows:

1. All solicitations shall incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured.

a. Such description shall not contain features that unduly restrict competition.

b. The description shall include a statement of the qualitative nature of the materials, products or services to be procured and; when necessary, shall set forth those minimum essential characteristics and standards to which they must conform to satisfy their intended use.

c. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by the bidders shall be clearly stated.

d. All requirements that the bidders must fulfill and all other factors to be used in evaluating bids or proposals shall be identified.

2. Project sponsors shall ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

3. The invitation for bids shall be publicly advertised and bids shall be solicited from an adequate number of known suppliers to ensure open competition, providing them sufficient time prior to the date set for opening the bids.

4. The invitation for bids, which shall include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

5. All bids shall be publicly opened at the time and place prescribed in the invitation for bids, and a firm-fixed-price contract (lump sum or unit price) awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bids.

6. Any or all bids may be rejected if there is a sound, documented reason.

7. Project changes after advertising for bids or other project proposals and before bid or proposal opening shall be made by addendum. Changes to executed contracts involving construction shall be made by change order. The project sponsor shall submit all addenda and change orders to the Department. The Department shall perform an eligibility determination for each change order.

(d) Competitive proposals shall be solicited from an adequate number of qualified sources to ensure open competition. The loan recipients shall have a method for conducting technical evaluations of the proposals received and for selecting awardees.

1. For the competitive best value selection method of procurement, awards shall be made to the responsible offeror whose proposal is most advantageous to the loan recipient, with price and other factors considered.

2. For the competitive qualifications based selection method of procurement, statements of qualifications shall be solicited from an adequate number of sources. Statements of qualifications received from at least three responsible vendors shall be considered adequate unless it is determined by the loan recipient that it is in its best interest to proceed with the procurement having received less than three proposals. Statements of qualifications shall be evaluated based on the request for qualifications. Awards shall be made to the responsive and responsible vendor whose statement of qualifications is deemed to be most advantageous by the loan recipient.

(e) Requirements for the noncompetitive proposals method of procurement shall be as follows:

1. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source or, after solicitation of a number of sources, the competition is determined inadequate.

2. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies:

a. The item is available only from a single source,

b. The public exigency or emergency for the requirement shall not permit a delay resulting from competitive solicitation, or

c. After solicitation of a number of sources, competition is determined inadequate.

3. A cost analysis verifying the proposed cost data and an evaluation of the specific elements of costs and profits is required.

4. Loan recipients shall submit the proposed procurement to the Department for pre-award review.

(f) Design/build and Construction Manager at Risk (CMR) procurement:

1. Competitive best value or competitive qualifications based selection shall be used as the selection process for design/build procurement.

a. Requests for competitive best value or competitive qualifications based selection proposals shall be submitted to the Department prior to advertising for a determination of compliance with loan program requirements.

b. The proposal solicitation shall describe the work eligible for a loan, the requirements with which the successful respondent shall comply, and the evaluation process to be used in selecting the successful respondent.

c. The design/build team will be identified as part of awarding the contract. If the construction contractor is not identified as part of the award, procurement shall follow steps to ensure a competitive process as described in paragraphs 62-552.700(6)(a) through 62-552.700(6)(d), F.A.C.

2. Requests for proposals shall be used in the selection process for CMR procurement.

a. The request for proposals shall describe the work eligible for a loan, the requirements with which the successful respondent shall comply, and the evaluation process to be used in selecting the successful respondent.

b. Requests for proposals shall be submitted to the Department prior to advertising for a determination of compliance with loan program requirements.

c. Work performed directly by the CMR shall be limited to no more than 50% of the guaranteed maximum price unless a higher percentage is requested and approved by the Department. For any construction work that will be performed by the CMR, bids or request for proposals shall be submitted to and reviewed by the sponsor or any other neutral party as determined by the sponsor to avoid a conflict of interest.

3. Advertising shall include announcement in a publication having general circulation on a statewide basis, in a construction trade journal, in a professional journal, or in an electronic plan room.

4. The time allowed for development of proposals or qualifications shall be commensurate with the complexity and extent of the work and with the extent of the conceptual documents provided with the request for proposals.

5. Both the qualifications of the respondents and the price for completing the advertised work shall be considered in the selection process.

6. The project sponsor shall demonstrate that the competition solicited is sufficient for the complexity and extent of the work.

(g) Loan recipients shall maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(h) Loan recipients shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the loan recipient shall participate in selection, or in the award or administration of a contract supported by SRF funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his immediate family, his or her partner, or an organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The loan recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Loan recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the loan recipient's officers, employees, or agents, or by contractors or their agents.

(i) Loan recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to

offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Loan recipients are also encouraged to complete water efficiency and energy audits to minimize operational costs.

(j) Loan recipients shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(k) Loan recipients shall maintain records sufficient to detail the significant history of a procurement. These records shall include the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(l) Loan recipients shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

(m) Retention of all required records for five (5) years after loan recipients or sub loan recipients make final payments and all other pending matters are closed.

(n) For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the Department shall accept the bonding policy and requirements of the loan recipient when the Department has made a determination that the Department's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(o) A loan recipient's contracts shall contain provisions for:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms,

2. Such sanctions and penalties as may be appropriate,

3. Termination for cause and for convenience by the loan recipient including the manner by which it shall be effected and the basis for settlement,

4. Access by the loan recipient, the Department, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions; and,

5. Incorporating the Department's Supplementary Conditions into its bid or request for proposals documents. These Supplementary Conditions include, but are not limited to, the following provisions:

a. Equal Employment Opportunity compliance,

b. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, and Executive Order 11738; and,

c. Contracting with small and minority firms, women's business enterprise, and labor surplus area firms (if applicable).

(7) Asset Management Plan. Loan recipients are encouraged to implement an asset management plan to promote long term sustainability of the system. To be accepted for the interest rate adjustment and to be eligible for reimbursement, an asset management plan must be adopted by ordinance or resolution and written procedures must be in place to implement the plan and it shall be implemented in a timely manner. The plan must include each of the following:

(a) Identification of all assets within the project sponsor's system;

(b) An evaluation of the current age, condition, and anticipated useful life of each asset;

(c) The current value of the assets;

(d) The cost to operate and maintain all assets;

(e) A capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life;

- (f) An analysis of funding needs;
- (g) An analysis of population growth and drinking water use projections, as applicable, for the sponsor's planning area, and a model, if applicable, for impact fees; commercial, industrial and residential rate structures;
- (h) The establishment of an adequate funding rate structure;
- (i) A threshold rate set to ensure the proper operation of the utility; if the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility; and,
- (j) A plan to preserve the assets; renewal, replacement, and repair of the assets, as necessary; and a risk-benefit analysis to determine the optimum renewal or replacement time.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-17-17.

62-552.800 Audits Required.

(1) Federal or State Audit Required.

(a) In the event that the project sponsor expends more than the federal audit threshold in federal awards in its fiscal year, the project sponsor must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as published in the *Federal Register*, June 26, 2007, hereby adopted and incorporated by reference. This document is available from the Department's Drinking Water State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, or electronic versions are available at http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf or <http://www.flrules.org/Gateway/reference.asp?No=Ref-08364>.

(b) Section 215.97, F.S., imposes audit requirements on the project sponsor and sub-recipients based on designated thresholds for expenditures. Each agreement entered into pursuant to this rule chapter shall include the audit requirements applicable to the project at the time the agreement is executed.

(2) For your information, pursuant to Section 215.97, F.S., the state is authorized to conduct an audit within five (5) years following project closeout if loan compliance problems have been noted; record keeping deficiencies are noted during close-out; the project involves unusual or questioned costs; or other justification for conducting the audit becomes apparent.

(a) The Department shall give the project sponsor advance notice of any audit.

(b) The Department shall prepare a written report on each audit and shall provide a copy of the report to the project sponsor. The project sponsor must respond, in writing, to the findings and recommendations within 30 days after receipt of a written request from the Department.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-17-17.

62-552.900 Forms for the State Revolving Fund Program for Drinking Water Facilities.

Rulemaking Authority 403.8532 FS. Law Implemented 403.8532 FS. History--New 4-7-98, Amended 8-10-98, 7-20-99, Repealed 7-17-17.