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Department of Environmental Quality

Chapter 340

Division 54

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

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) Ensures the loan application and funding processes, procedures and requirements are clear.

(c) Promotes loan affordability by offering below-market interest rates.

(d) 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

340-054-0010

Definitions

The following definitions apply to this rule division:

- (1) “Applicant” means a public agency that has applied for a CWSRF loan under this division.
- (2) “Borrower” means a public agency that has signed a CWSRF loan agreement with DEQ.
- (3) “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.
- (4) “Checklist of application requirements” means a list that DEQ provides of all documents an applicant must submit to DEQ under this division.
- (5) “Clean Water Act” or “CWA” means the federal Water Pollution Control Act, 33 U.S.C. § 1251 – § 1387.
- (6) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.
- (7) “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.
- (8) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.
- (9) “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.
- (10) “DEQ” means the Oregon Department of Environmental Quality.
- (11) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.
- (12) “Eligible recipient” means public agency with the meaning given in ORS 468.423.
- (13) “EPA” means the U.S. Environmental Protection Agency.

(14) “Estuary management” means implementing actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.

(15) “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.

(16) “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.

(17) “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.

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

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

(20) “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.

(21) “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.

(22) “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.

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

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

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

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

(27) “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.

(28) “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.

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

(30) “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.

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

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

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

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

(35) “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.

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

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

(38) “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:

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

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

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

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

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

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

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

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

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

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

340-054-0011

Authorized Fund Uses

DEQ will use the CWSRF only to:

(1) Make loans to eligible borrowers identified in the Intended Use Plan developed under OAR 340-054-0025;

(2) Fund loan reserves specified in OAR 340-054-0036;

(3) Purchase bonds or acquire other debt obligations incurred after March 7, 1985 as OAR 340-054-0071 provides;

(4) Pay CWSRF program administration costs to the extent federal and state law allow;

(5) Earn interest on fund accounts;

(6) Establish reserves for bonds issued by the state for use by the fund; or

(7) Pay principal and interest of bond obligations sold to benefit the fund.

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

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

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.

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 - 468.440

History:

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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

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 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 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):
 - (A) An applicant's revenue stream is not at risk from undue dependence on a limited portion of the system's customer base or a pattern of delinquent payment from that portion of the system'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 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 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.”

[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](#)

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

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

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 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](#)

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

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

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

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

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

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

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

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

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

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

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

340-054-0026

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

- (1) Category 1. Water quality standards and public health considerations.
 - (a) Does the project improve water quality by addressing water quality parameters including, but not limited to: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?
 - (b) Does the project ensure that a facility currently in compliance, but at risk of noncompliance, remains in compliance?

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

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

(2) Category 2. Watershed and health benefits.

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

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

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

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

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

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

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

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

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

(3) Category 3. Other considerations.

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

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

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

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

(e) Does the project include a sponsorship option?

Statutory/Other Authority: ORS 468.020 & 468.440

Statutes/Other Implemented: ORS 468.423 - 468.440

History:

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[340-054-0027](#)

Clean Water State Revolving Fund Loans: 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

340-054-0036

Clean Water State Revolving Fund Loans: 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 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 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 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 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 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

[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 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 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

[340-054-0060](#)

Clean Water State Revolving Fund Loans: 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 borrower fails to begin using loan proceeds within two years after signing a loan agreement.
 - (b) 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 borrower. The borrower must pay these costs within 30 days after DEQ sends the invoice.

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

(2) Accounting. A 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 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 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 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 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.

(6) Debarment and suspension. A 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 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 340-052 and 340-054-022 require.

(8) Inspections and progress reports.

(a) A 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 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 340-052 support the project's successful implementation and completion. A 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 if:

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

(B) The 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 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 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 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 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.

(16) Audit.

(a) If DEQ requests it, a 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 borrower expends \$750,000 or more in federal funds, from all sources, in a fiscal year beginning on or after December 26, 2014, 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 borrower must submit copies of all audits to DEQ within 30 days of completion. If a 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 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 borrower, DEQ may proceed with one or more of the following:

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

(b) Appointing a receiver at the 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 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 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 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 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 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 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 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

[340-054-0065](#)

Clean Water State Revolving Fund Loans: Loan Types, Terms and Interest Rates

(1) Loan types. A CWSRF loan must be one of the following:

- (a) A loan secured by a general obligation bond, as defined in ORS 287A.001(1).
- (b) A loan secured by the 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 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 borrower to DEQ. The obligation to pay must include a pledge of security DEQ accepts.

(b) Include a rate provision that requires the 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 borrower selects from subsection (d) of this section of the rule.

(c) Include a debt service reserve provision requiring the 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 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 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 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 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 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 borrower's financial condition.

(i) Prohibit the borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the 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 for a reasonable alternative financing method if the 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 borrower; and

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the borrower. DEQ may consult with a financial advisor and may

charge the borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates.

(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. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a borrower. A borrower must include all outstanding accrued interest with each loan repayment.

(6) Annual loan fee.

(a) Except as provided in subsection (b) of this section of the rule, a 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 borrower is required to make under its loan agreement.

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

(7) Commencement of loan repayment. A 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.

(a) A 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. 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. 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.

(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 borrower.

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

(11) Leveraged loans.

(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 DEQ may provide additional subsidization 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 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 are eligible for additional subsidization:

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

(B) Applicants 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 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:

(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 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 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 may receive additional subsidization for up to fifty percent of their loan but not to exceed \$500,000.

(B) For applicants that qualify for additional subsidization 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 may only receive one additional subsidization award per project.

(g) Award Reserves.

(A) DEQ will reserve seventy percent of the additional subsidization allocation for 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 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 borrowers that are eligible under paragraph (a)(C) of this section of the rule.

(h) Loan Term. Applicants eligible for additional subsidization 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 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:

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

340-054-0071

Purchase and Refinancing of 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:

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

340-054-0072

Purchase and Refinancing of 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. DEQ may provide additional subsidization 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

